INTERSTATE COMMERCE COMMISSION REPORTS

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INTERSTATE COMMERCE COMMISSION REPORTS.

No. 3610.

VAN NATTA BROTHERS ET AL.

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.

Submitted October 16, 1911. Decided March 11, 1912.

Complainants are owners and operators of grain elevators located at points in Indiana and Illinois, on the line of the principal defendant. Under the tariffs of other roads which serve complainants' competitors in the same producing territory grain can be unloaded into elevators at Chicago, Ill., and there treated and shipped on at the balance of a through rate from point of origin to destination. Said defendant is a party to such tariffs and participates in the through rates, but it refuses to grant like rates, or to allow any transit privilege at Chicago, on grain from complainants' elevators; its purpose being to hold such grain to its own line in order to get the larger revenue incident to the longer haul to eastern markets; *Held*, That such course of conduct constitutes an undue discrimination against complainants from which the carrier should be required to desist.

Thompson & McAdams for complainants.

O. E. Butterfield for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner:*

The complainants are owners and operators of grain elevators located on the line of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, hereinafter called the Big Four, at Templeton, Atkinson, Fowler, Earl Park, and Raub, in the state of Indiana, and Sheldon, Iroquois, and Donovan, in the state of Illinois. Templeton is 110 miles from Chicago. The other points are north of Templeton and nearer Chicago. The complainants purchase grain from nearby farmers, store it in their elevators, and ship therefrom to various markets. The capital invested in their plants aggregates about $250,000, and they handle annually over three million bushels of grain.

By petition, filed October 24, 1910, complainants allege, in substance, that defendants' rates on grain in carloads from the points mentioned to Chicago are unreasonable and discriminatory, and subject them to undue prejudice and disadvantage. The rates are shown in the following table:

TO CHICAGO.

From—	Distance.	Rate per 100 pounds.	Rate per ton per mile.
	Miles.	*Cents.*	*Cents.*
Templeton, Ind	110	7	1.27
Atkinson, Ind	106	7	1.30
Fowler, Ind	101	7	1.38
Earl Park, Ind	94	7	1.49
Raub, Ind	89	7	1.57
Sheldon, Ill	84	6	1.42
Iroquois, Ill	80	6	1.50
Donovan, Ill	76	6	1.57

In the same producing territory are other grain elevators, operated in competition with complainants, located at points on the lines of the Chicago & Eastern Illinois and Chicago, Indiana & Southern railroads. These other roads publish rates on grain from said points to Chicago as follows:

CHICAGO & EASTERN ILLINOIS POINTS.

To Chicago from—	Distance.	Rate per 100 pounds.	Rate per ton per mile.
	Miles.	*Cents.*	*Cents.*
Pine Village, Ind	....	....	....
Oxford, Ind	102	6.5	1.27
Swanington, Ind	97	6 5	1.34
Brace, Ind	94	6.5	1.38
Lochiel, Ind	91	6 5	1.42
Wadena, Ind	89	6.5	1.46
Goodland, Ind	84	6	1.43
Brook, Ind	76	6	1.58
Morocco, Ind	69	6	1.73

CHICAGO, INDIANA & SOUTHERN POINTS.

Dunn, Ind	95	6.5	1.36
Free, Ind	91	6.5	1.42
York, Ind	86	6.5	1.51
Kentland, Ind	81	6	1.48
Sheff, Ind	95	6	1.40
Ade, Ind	74	6	1.62
Morocco, Ind	69	6	1.73

Under the tariffs of the Chicago & Eastern Illinois, grain originating at points on its line may be unloaded into elevators at Chicago and there treated, and if within 12 (formerly 6) months after reaching Chicago it is shipped out to eastern or interior eastern destinations by lake, or lake and rail, the inbound rate is reduced to 4½ cents

per 100 pounds. Through rates are also provided on substantially the same level, with like transit privileges at Chicago, on grain moving all rail. The tariffs of the Chicago, Indiana & Southern provide like rates and privileges on grain originating at points on its line. The arrangement is commonly known as "Illinois proportional billing." The defendants are both parties to the tariffs referred to, and also to tariffs of other grain-carrying roads entering Chicago under which similar proportional or reshipping rates are maintained and like transit privileges allowed.

The Big Four participates in the rates out of Chicago to eastern and interior eastern destinations, but its tariffs expressly provide that proportional or reshipping rates shall not apply on grain moving into Chicago from points on its own line. It publishes joint rates from complainants' elevators to eastern points, *not via Chicago*, as shown in the following table:

From—	To—	Rate per 100 pounds.	
		Domestic.	Export.
		Cents.	*Cents.*
Donovan, Iroquois, Raub, and Earl Park, Ill., and Fowler, Ind.	Boston, Mass	22½	17½
	Baltimore, Md	17½	16
	New York, N. Y	20½	17½
	Newport News, Va	17½	16
	Philadelphia, Pa	18½	16½
Atkinson and Templeton, Ind	Boston, Mass	22	17½
	Baltimore, Md	17	16
	New York, N. Y	20	17½
	Newport News, Va	17	16
	Philadelphia, Pa	18	16½

Complainants' elevators are located in one of the great grain-producing sections of the United States. In four of the Indiana counties embraced in the territory 20,000,000 bushels of corn and oats are produced annually—more than in the six New England states combined. The chief markets for this grain are Chicago and the large eastern cities.

Chicago is perhaps the greatest grain market in the world. Its elevator capacity is over 50,000,000 bushels. The evidence shows that its annual receipts of corn aggregate more than 90,000,000 bushels, and its receipts of oats are nearly as large. The annual shipments of these grains to eastern points by lake aggregate over 30,000,000 bushels.

The Chicago elevators are supplied with equipment for cleaning, drying, cooling, and otherwise treating grain and putting it in marketable condition. They also have facilities for mixing low-grade grain with the higher grades in a manner to command better prices than if sold in its original state. The elevators operated by complainants and their competitors are not equipped for such service.

Undoubtedly the transit privilege at Chicago is of material benefit to owners of elevators at originating points who are in a position to take advantage of it. This is especially true with respect to grain in off-grade condition, which can not be moved with safety to Buffalo, Philadelphia, or Baltimore, where like facilities and privileges obtain, because of the long haul. In such cases there is danger of the grain being seriously injured in transit. The movement into Chicago requires only a few days, whereas shipments to eastern points require a much longer period of time. The mixing or blending of grain of different grades is a valuable method of treatment.

From Chicago to New York the all-rail rate is 16 cents per 100 pounds, applying via all lines. The lake-and-rail rate is of course lower. There are no joint rates in force from the points where complainants' elevators are located to New York that apply via Chicago. To ship their grain through Chicago to New York complainants must pay the local rate into Chicago plus the rate beyond. Combination through rates may be thus obtained of 23 cents from Templeton, Atkinson, Fowler, Earl Park, and Raub, and 22 cents from Iroquois, Sheldon, and Donovan. Combinations may also be made of the inbound local rates and the outbound lake-and-rail rates. But transit privileges at Chicago are not allowed under any of these combinations.

Complainants' competitors get the benefit of a rate of 4½ cents into Chicago, which gives them a through rate of 20½ cents from their elevators to New York, all-rail, and a considerably lower through rate by lake, or lake and rail; and, in addition, they get the benefit of the transit privilege at Chicago. The advantage to complainants' competitors is apparent.

It is this situation that complainants assail as discriminatory and unduly prejudicial to their interests. They contend that defendants' rates into Chicago on grain for eastern destinations are prohibitory. The evidence would appear to sustain the contention. As the matter now stands complainants can not ship their grain for eastern markets via Chicago in competition with other operators in the same producing territory. They are denied the proportional or reshipping rates accorded their competitors, and are likewise denied the transit privilege their competitors enjoy. The result is that they are effectually shut out of the Chicago market.

There is evidence of record to the effect that Chicago bids for grain in the territory in question are at times materially higher than bids received from other markets. Complainants are denied the benefit of such bids because they can not reach Chicago on equal terms with their competitors

In justification of its rates, and of its refusal to grant to complainants transit privileges at Chicago, such as are accorded other

shippers of grain from the same producing territory, the Big Four contends that it has the right to hold complainants' grain to its own line in order to get the long haul to the markets of the east.

As a general rule a common carrier may so construct its tariffs as to hold traffic to its own line, if such action does not involve discrimination in some of the prohibited forms, or otherwise violate the law. The question here is whether the rate adjustment complained of involves such discrimination.

It can not be denied that under the present situation complainants are compelled to rely upon the markets of the east for the disposal of their grain. Chicago is their nearest market, and the nearest point at which they can secure proper and efficient service for the treatment of their grain, and yet they are refused all benefit of both the market and the service and are forced to ship grain for long distances in its original or untreated state, at times in a condition of unfitness for the trade. The privileges of which complainants are thus deprived, their competitors enjoy.

The Big Four is a party to numerous joint tariffs under which proportional or reshipping rates are applied on grain moving from Indiana and Illinois points to eastern destinations, with transit privileges at Chicago, including the tariffs of both the Chicago & Eastern Illinois and the Chicago, Indiana & Southern. The last-named road is a part of the same general system to which the Big Four belongs.

It is the right of a shipper to reach at reasonable transportation rates all markets within the sphere of his commercial activity. This right can not be denied by means of rate schedules constructed with the view to holding traffic to any particular line or lines, or with the view to compelling favor to one market over another. The function of a common carrier is to transport at reasonable rates the traffic that is tendered to it, and it has no right, by any unreasonable adjustment of its rate schedules, to deprive a shipper of any market that would otherwise be open to him.

Upon the facts of record we are of opinion and hold that the rate adjustment complained of is unreasonable and unduly discriminatory. Its effect undoubtedly is to deprive complainants of their right to reach the Chicago market on relatively equal terms with their competitors, and they are thereby subjected to undue prejudice and disadvantage. For this situation the Big Four is primarily responsible. The record presents no reason why this defendant should participate in proportional or reshipping rates on grain under which transit privileges are allowed at Chicago, and decline to grant the same rates and privileges on grain from complainants' elevators. We hold that such course of conduct on its part creates an undue discrimination from which it should be required to desist.

So long as the Big Four shall participate in the transportation of grain to eastern points, which has moved into Chicago under tariffs that provide proportional or reshipping rates from originating points in the territory in question, with transit privileges at Chicago, it is its duty to accord like rates and transit privileges on grain from complainants' elevators. It should cease from its present discriminatory practice either by withdrawing from the transportation of grain to eastern destinations which has been accorded proportional rates and transit privileges at Chicago, or by granting to complainants the same rates and privileges on grain from their elevators.

We shall expect defendants to readjust their tariffs in accordance with the views herein stated. If this is not done within thirty days from the date hereof, we will issue the necessary order to give effect to our conclusions.

INVESTIGATION AND SUSPENSION DOCKET No. 55.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF STOCK CATTLE AND SHEEP.

Submitted February 10, 1912. Decided March 11, 1912.

Proposed increase of 33⅓ per cent in the rate on "stocker" and "feeder" cattle and sheep not justified.

George T. Bell and *M. W. Baldwin* for Sioux City Livestock Exchange.

A. F. Stryker and *Baxter & Van Dusen* for South Omaha Livestock Exchange.

H. Loomis for South St. Paul Livestock Exchange.

H. G. Wilson and *W. H. Weeks* for Kansas City Livestock Exchange.

J. H. Henderson for Board of Railway Commissioners of Iowa.

H. G. Krake for Commercial Club of St. Joseph.

F. M. Blanchard for St. Joseph Livestock Exchange.

A. Sykes and *J. H. Henderson* for Corn Belt Meat Producers Association of Iowa.

T. W. Tomlinson for American National Livestock Association.

T. M. Bradbury for Missouri Board of Railroad and Warehouse Commissioners.

C. W. Baker and *C. S. Jones* for Chicago Livestock Exchange.

John Marshall for the Public Utilities Commission, state of Kansas.

T. L. Wolff for Illinois Board of Railway & Warehouse Commissioners.

C. C. Wright and *F. P. Eyman* for Chicago & North Western Railway Company.

W. F. Dickinson and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; and St. Paul & Des Moines Railroad Company.

A. P. Humburg for Illinois Central Railroad Company.

Geo. H. Crosby for Chicago, Burlington & Quincy Railroad Company.

J. G. Love for Chicago, Milwaukee & St. Paul Railway Company.

B. M. Flippin for Missouri Pacific Railway Company and St. Louis, Iron Mountain and Southern Railway Company.

N. S. Brown and *T. R. Farrell* for Wabash Railroad Company.

Lucien H. Alexander for Chicago & Alton Railroad Company.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

Report of the Commission.

CLEMENTS, *Commissioner:*

This proceeding involves the reasonableness of an advance of 33⅓ per cent in the rates on stock cattle and sheep throughout the western states to and beyond the Missouri River, contained in the following proposed tariffs:

Atchison, Topeka & Santa Fe Railway Company, I. C. C. 5813; Chicago & Alton Railroad Company, Supplement 2 to I. C. C. A–257; Chicago & North Western Railway Company, Supplement 10 to I. C. C. 6839, Supplement 20 to I. C. C. 7151, Supplement 2 to I. C. C. 7228, Supplement 18 to I. C. C. 6696, Supplement 22 to I. C. C. 7151; Chicago, Burlington & Quincy Railroad Company, Supplement 1 to I. C. C. 10225, Supplement 5 to I. C. C. 10055, Supplement 12 to I. C. C. 9927, Supplement 5 to I. C. C. 10054, Supplement 10 to I. C. C. 9811, Supplement 6 to I. C. C. 9822; Chicago Great Western Railroad Company, Supplement 1 to I. C. C. 4745, Supplement 8 to I. C. C. 4680, Supplement 11 to I. C. C. 4769, Supplement 4 to I. C. C. 2983, Supplement 4 to I. C. C. 4707, Supplement 5 to I. C. C. 4707; Chicago, Milwaukee & St. Paul Railway Company, Supplement 5 to I. C. C. B–2023, Supplement 4 to I. C. C. B–2109, Supplement 1 to I. C. C. A–9479, Supplement 2 to I. C. C. B–2253; Chicago, Rock Island & Pacific Railway Company, Supplements 1 and 2 to I. C. C. C–9085, Supplement 18 to I. C. C. C–8789, Supplement 19 to I. C. C. C–8789, Supplement 63 to I. C. C. C–4549, Supplement 64 to I. C. C. C–4549, Supplement 2 to I. C. C. C–9140; Chicago, St. Paul, Minneapolis & Omaha Railway Company, Supplement 11 to I. C. C. 3653, Supplement 19 to I. C. C. 3422, Supplement 20 to I. C. C. 3422; Great Northern Railway Company, Supplement 9 to I. C. C. A–878, Supplement 39 to I. C. C. A–882, I. C. C. A–3412; Illinois Central Railroad Company, Supplement 5 to I. C. C. A–7708, Supplement 1 to I. C. C. A–6458, Supplement 9 to I. C. C. A–7535, Supplement 11 to I. C. C. A–5677; Minneapolis & St. Louis Railroad Company, Supplement 35 to I. C. C. 1750, Supplement 36 to I. C. C. 1750; Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Supplement 3 to I. C. C. 2812; Northern Pacific

Railway Company, Supplement 7 to I. C. C. 3819, Supplement 8 to I. C. C. 3819, Supplement 3 to I. C. C. 4166, Supplement 4 to I. C. C. 3971, Supplement 5 to I. C. C. 4362, I. C. C. 4851; Pierre, Rapid City & Northwestern Railway Company, Supplement 10 to I. C. C. 12; Toledo, St. Louis & Western Railroad, Chicago & Alton Railroad Company, and Iowa Central Railway Company, Supplement 12 to I. C. C. A–40; Wabash Railroad Company (Receivers), Supplement 1 to I. C. C. 2120, Supplement 6 to I. C. C. 2621, I. C. C. 2806, Supplement 7 to I. C. C. 2621.

The testimony, which is confined almost exclusively to cattle, applies also to the transportation of sheep, and our findings are therefore equally applicable to sheep.

There are two general bases of live-stock rates, what is known as the "100-per-cent rate," which applies on all cattle to market, and a 25 per cent lower rate on cattle shipped to country points for further feeding, this rate being spoken of as the "75-per-cent basis." The cattle on which the lower rates apply are called in the record either "stockers," which are susceptible of further growth as well as fattening, or "feeders," which are larger than stockers and fed mainly for the purpose of fattening for slaughter. Cattle bought by packers are designated in this record as "market cattle" or "fat cattle." Stockers weigh from 400 to 900 pounds; feeders from 900 to 1,200 pounds, and fat cattle from 1,400 to 1,500 pounds. While the differentiation is readily apparent between fat cattle and stockers, it is more difficult between fat cattle and feeders, a packer selecting for slaughter on one day what might be sold on the next day as a feeder, depending upon the supply of fat cattle.

The tariffs containing the proposed rates have been postponed to various dates as late as June 13, 1912, upon protests of the live-stock exchanges at Sioux City, South Omaha, South St. Paul, Kansas City, and Chicago, and of the Corn Belt Meat Producers' Association of Iowa, an organization of some 5,000 feeders of cattle in that state. The state commissions of Iowa, Missouri, Kansas, and South Dakota also were represented at the hearing. An exhaustive hearing was had, and certain other live-stock records in previous proceedings before the Commission have been stipulated in so far as applicable into the present record.

The 75-per-cent rate on feeders was originally intended for application between the raising point and feeding grounds direct, but with the splitting up of the larger ranches and herds it became more convenient and less expensive to buy at market centers, and to-day the greater part of the stockers and feeders are bought on markets like Kansas City, Sioux City, South Omaha, and Chicago. There are other advantages in the market system, among the principal of

which are the ability to secure a uniform lot of feeders, which will finish for market at the same time, and the financing of the feeding business, which is carried on at the principal markets on a large scale. The present complaint, therefore, is largely confined to the relative service to the markets on all cattle, on the one hand, and on stockers and feeders from the markets to the feed lots, on the other.

There are various reasons assigned by each party for and against the proposed increase in these rates, complainants contending that from the standpoint of value, character and cost of service, damage claims, an insured second haul to market on the fat cattle, and the value of the service to the shipper, the 75-per-cent rate on feeders is reasonable compared with the service and rate on market cattle; whereas the defendants, while denying any appreciable difference in the cost of service between market cattle and feeders, rest mainly upon the contention that "cattle are cattle," with no such dissimilarity of transportation conditions as to warrant a lower rate on the one class than on the other.

It is further contended that the existing rates are dependent upon the use to which the cattle are put and that this is contrary to the Commission's rulings. We are not convinced, however, of the applicability of this argument to the present case, the decisions cited involving shipments (of coal) used for different purposes but transported under substantially similar circumstances and conditions, while here, although the commodity may in its general nature be the same, the continuance of the lower rate is demanded on feeders because of an alleged substantial dissimilarity in the transportation service from that on market cattle, and of the value of that service to the shipper. As stated, all cattle, whether fat cattle, stockers, or feeders, pay the full 100-per-cent rate to market, whether sold to the packing houses for slaughter or returned to some country point for further feeding, thus marking a clear line of cleavage between the inbound and outbound movements and preventing the exercise of any discretion in rate application, except perhaps to a few points (like Cedar Rapids) which have packing industries and receive in addition a considerable number of feeders.

This presents another alleged possibility for manipulation suggested by defendants, by shipping to a point like South Chicago and reshipping to the Chicago market in defeat of the fat-cattle rate, but as no specific instances could be shown and the record is so clear as to the shrinkage from unloading, which would completely offset any rate advantage, and more, we can not consider this as controlling. Moreover, a possible manipulation, which is punishable under other sections of the statute, should not alone deprive shippers of reasonable rates to which otherwise they would be en-

titled. We shall therefore look to the transportation conditions affecting the rate.

There are but few figures submitted on cost of service and these are not claimed to accurately reflect the situation. It therefore becomes necessary to deal broadly with the complaint, without any attempt to find with accuracy and certainty the exact extent of any particular influence on the rate.

There is a difference in the value of feeders and fat cattle of from $1 to $3 per 100 pounds, averaging perhaps a trifle under $2, or something less than 40 per cent. The minimum carload weight is the same on all cattle, and while there is a diversity of opinion as to the relative loading of fat cattle and feeders, the record as a whole seems to establish that on the average there is not much difference in the actual carload weights.

Fat cattle are the subject of heavy claims for shrinkage and fall in price from delays in reaching the markets and from their becoming stale and below the standard in appearance, a condition which experienced buyers readily recognize and reflect in the price. It is desirable to feed and water cattle before the opening of market, and a delay of two hours may form the basis for heavy claims. Claims for delay on stockers and feeders are exceedingly rare, as there is no market to meet, and any shrinkage is overcome in a short time without great expense. Several feeders of cattle with experiences of from 20 to 30 years testified to having filed not more than one or two, if any, such claims.

More expeditious handling of market cattle is thus required than of feeders and stockers, and for long hauls the carriers operate special trains to market, usually on certain days of the week, upon being tendered the required number of cars, ranging from five up. As a great percentage of market cattle originates on branch lines there is necessitated the distribution of empty cars and the pick-up service on the loaded cars for consolidation at the junction point into special trains. These trains have precedence over all other freight, and in some instances over passenger traffic. Stockers and feeders, however, move in the regular freight trains, as way freight, and frequently are sidetracked for market cattle or other fast freight. Delays of from several hours to a day or two are not uncommon in reaching destination. There is much difference of opinion as to whether it is cheaper to handle feeders irregularly, a car here and there, or to transport market cattle in through expedited trains, and while it is impracticable to measure the exact difference in cost, it seems reasonably clear that the expedited service, with its greater resulting damage claims, is the more expensive, and certainly the value of the service to the shipper is substantially greater on market cattle.

It is equally difficult to apportion with certainty the benefits from available empty cars at loading points of market and feeder cattle, respectively, but considering the comparatively few markets with their large consignments, and the greater number of widely divergent destinations of occasional shipments of feeder cattle, it seems clear that the balance of advantage is with the movement of the latter.

The present relative adjustment of rates has been in effect for 25 years or more, and the burden is upon the carriers to justify its discontinuance by the proposed advances. We can not accept the carriers' contention that the 75-per-cent rate on stockers and feeders is a gratuity to be withdrawn at will. The question is whether under all the circumstances and conditions the proposed rates are reasonable for the service performed, and in determining that question no particular factor should exclude others of important bearing, unless of controlling force. Considering all of the facts, circumstances, and conditions appearing, it is our opinion, finding, and conclusion that an increase in the rates here involved has not been justified, and consequently that the proposed increased rates in the tariffs hereinbefore enumerated are unreasonable and unjust. It is our further finding that the rates on stockers and feeders now in effect should not be exceeded for the future.

We shall expect the carriers to cancel these proposed rates by April 15, 1912, and permission is hereby given to make the cancellation effective on one day's notice. If this is not done by the date specified a suitable order will be entered.

No. 4089.

CHICAGO, WILMINGTON & VERMILLION COAL COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Submitted December 15, 1911. Decided February 12, 1912.

Upon complaint that complainant's coal mine at Thayer, Ill., is the only mine excepted from the Chicago, Burlington & Quincy Railroad's general practice of building and operating mine spurs in its Illinois fields, and that this carrier also refuses to operate such spur after construction thereof by complainant or to grant an allowance for the service now rendered by complainant; *Held*, upon the facts of record, That defendant subjects complainant to unreasonable prejudice and disadvantage, from which practice it should cease and desist.

George C. Mastin, *John J. Sherlock*, *Frank Crozier*, and *Luther M. Walter* for complainant.

Hal C. Bangs for Chicago, Zeigler & Gulf Railway Company.

Chester M. Dawes and *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner:*

Complainant operates a coal mine at Thayer, Ill., about three miles east of the Beardstown branch of the Chicago, Burlington & Quincy Railroad and directly on the Chicago & Alton. In 1907 it constructed a spur track, 2.71 miles long, to the Burlington at Thayer junction, which spur is now operated under the corporate name of the Thayer Junction Railway. The Burlington has built and operates spur tracks to other mines in the Springfield group, in which Thayer is located, as well as in the southern group, but refused either to build, or, after construction by complainant, to operate the connection between its rails and complainant's mine. The petition asks for an allowance per car for the service rendered or that in other suitable manner the defendants be required to correct the alleged unjust discrimination. Reparation is asked on past shipments.

The practice of the Burlington has been to build mine spurs in these fields upon being deeded the right of way. Only one other mine on that line has constructed its own track, and in this instance the expense is being repaid in purchase thereof by the Burlington. At all the other Burlington mines except Thayer, the track, in addition to construction by that carrier, has been operated by it without extra charge above the group rate applicable from stations on its own rails. It was agreed originally to place the Thayer mine upon the same basis, but this agreement was abandoned, partly because of protest by the Chicago & Alton, and partly because it was not desired to expend the required sum at that time in the Springfield group, neither of which considerations, it may be remarked, justifies an unjust discrimination against the complainant's mine. Coal from the southern group is domestic coal of superior quality to that from the mines near Springfield, which is largely used for steam purposes, and as it produces greater revenue in reaching more distant markets, the defendant states it has been its policy to give preference to the development of this field, over the Springfield group. Complainant then built the spur on its own account, being compelled to that action by the limited interstate markets afforded by the Alton and by the failure of that carrier to furnish adequate equipment and its refusal to deliver its cars to foreign lines in winter, thereby materially affecting sales in other months.

Defendant built and operates a connection with the Royal colliery at Virden, four miles south of Thayer, and, while receiving most of the tonnage from this mine, also performs a switching service to the Chicago & Alton. It has also similarly favored the Glen Ridge mine, 15 miles south of Thayer; the Litchfield mine, 25 miles south; and numerous mines in the southern group, the spurs ranging in length from a few hundred feet to one under construction of approximately five miles.

Considerable evidence is introduced with reference to the Zeigler mine at Zeigler, Ill., in the southern group. The Zeigler mine is about a mile north of the town of that name, both being served by the Chicago, Zeigler & Gulf Railway, a property of the Zeigler coal interests. The Zeigler road is from four to six miles in length, and has connections with the Illinois Central and Iron Mountain. In order to share in this traffic the Burlington constructed a track 8,600 feet in length to this line and now makes an allowance of $1 per car, as part of a joint rate, on all coal delivered to it by that carrier. The Zeigler road has one engine and three or four cars, maintains a station and agent, and is operated independently. Practically all its business is coal, probably 3,000 pounds of merchandise a week being handled in addition, in the transportation of which it also re-

ceives a division of the joint rate. The Zeigler mine has been operated about a year and a half by the Bell & Zoller Mining Company and the Zeigler road by the Leiter interests under an individual agreement that the Bell & Zoller Company shall receive half the profits or sustain half the loss of its operation. Immediately prior to the Bell & Zoller lease the mine appears to have been closed down and with it the Zeigler road. The Thayer Junction Railway likewise has one engine, a few cars, and its own crew, but does not participate in any joint rates or file tariffs with the Commission.

In the case of both these roads, the Burlington's connection with the traffic ends with placing empty cars upon its siding and collecting the loaded cars. All coal from Thayer is billed by defendant "Virden (Thayer)," and Thayer is shown as a Burlington station in that carrier's tariffs.

Complainant contends that the situation at its mine is in all substantial respects similar to that at Zeigler except that it does not consider the Thayer Junction Railway a common carrier under the rulings of the Commission, although as much entitled to be so considered as the Zeigler road. The Burlington, on the other hand, differentiates the conditions at Thayer and Zeigler on the theory that the Zeigler road is a common carrier and the $1 per car allowance a division of a joint rate, whereas the Thayer Junction Railway is a mere plant facility. It also asserts that the Zeigler spur remained practically idle for a year after completion and that the competition of the other carriers necessitated an allowance in order to secure to it any share of the traffic from the Zeigler mine.

Upon the whole, the record does not show any substantial difference in the physical conditions existing at the Thayer mine and other Burlington mines in the immediate fields whose spurs have been constructed and operated by that carrier and none, except in form, between the Thayer and Zeigler roads, the latter allowance also being, in effect, to the Zeigler mine. The question arises whether the Commission can remove such discrimination. It is mainly under the section prohibiting unjust discrimination that complainant asks relief. In the original petition it is prayed that an allowance be granted or that the Zeigler allowance be discontinued, the amount asked for complainant's service being $1.75 per car. At the hearing this was increased to $3 per car, and at the argument it was urged that the Burlington be required to purchase this spur as reparation for an expense which should originally have fallen upon that carrier under its general practice in such cases. In other words, complainant claims that the measure of the discrimination against it, regardless of the amount of the allowance to the Zeigler road or mine or the cost of the Burlington's spur-track service at other mines, is the total expenditure in furnishing a highway to the Burlington's rails.

We find that the defendant has subjected complainant to undue and unreasonable prejudice and disadvantage, from which practice it will be expected to cease and desist. We shall make no order at this time, but will hold the case open until May 1, 1912, pending advice from the defendant company as to its course in conforming with the views herein expressed. The subject of allowances or divisions of the kind herein referred to is under consideration by the Commission in other cases, and nothing herein said should be considered as sanctioning or expressing any opinion upon the question of allowances to either of these mines. The validity of the allowance or so-called division accruing to the Zeigler road would appear to be at least questionable in view of the fact that when the owning coal company shuts down this alleged carrier also suspends operation.

No. 3771.

STONEGA COKE & COAL COMPANY ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted February 15, 1912. Decided March 12, 1912.

1. A railroad company which holds itself out to the public as a common carrier, files tariffs with and makes reports to the Interstate Commerce Commission required by law of common carriers, and engages in the transportation of interstate traffic, is a common carrier subject to the provisions of the act to regulate commerce.
2. The character of service a railroad company renders, and holds itself out as willing to render, is the controlling inquiry in a proceeding to determine whether such company is a common carrier.
3. Through routes and joint rates for the transportation of coal and coke from complainants' mines and plants at or in the vicinity of Keokee, Va., to various points in Kentucky, Ohio, and other states, required to be established by defendants.
4. The fact that a carrier maintains lower rates from points on its own line than rates in force on the same kind of traffic from nearby points on the line of another railway and not on its own line, does not of itself amount to undue discrimination against shippers at the latter points.
5. The principal defendant renders a transportation service to owners of coal operations in the Black Mountain district of Virginia, on the line of the Virginia & Southwestern Railway, but refuses to render a like service, under substantially similar circumstances and conditions, to complainants' coal operations in the Appalachia district on the Interstate Railroad; *Held*, That such conduct amounts to undue discrimination against complainants.

William A. Glasgow, jr., and *J. F. Bullitt* for complainants.

Helm Bruce and *William A. Northcutt* for Louisville & Nashville Railroad Company.

R. Walton Moore for Virginia & Southwestern Railway Company.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner:*

Complainants are corporations engaged in mining coal and manufacturing coke in Wise and Lee counties, in the state of Virginia. By their petition, filed January 17, 1911, they ask that through routes and joint rates be established from their mines and coking plants over the lines of defendants to various designated points in Kentucky, Ohio, and other states. They assail the present rates as unduly discriminatory against them in favor of their competitors in the same general territory.

The operations of complainant Stonega Coke & Coal Company are located at Stonega, Roda, Osaka, Arno, and Imboden in Wise county,

and at Keokee in Lee county. Those of complainant, Blackwood Coal & Coke Company, are located at Blackwood and Roaring Fork in Wise county.

The main line of the defendant Interstate Railroad Company extends from Stonega to Appalachia, Va., where it connects with the Louisville & Nashville and Virginia & Southwestern lines, and thence via Blackwood to Norton, Va., where it connects with the Norfolk & Western Railway. It has branch lines extending to Roda, Osaka, Arno, and Roaring Fork, all of which points it serves.

The line of the defendant Virginia & Southwestern Railway Company, which comes up from the south, connects with the Louisville & Nashville and Interstate railroads at Appalachia. It continues thence in a southwesterly direction via Imboden and Keokee to St. Charles, Va., a distance of about 26 miles. It also has a line extending from Appalachia in a northeasterly direction via Norton to the Toms Creek coal field.

The line of the defendant Louisville & Nashville Railroad Company reaches this region via Corbin and Middlesborough, Ky., and Cumberland Gap and Pennington, Va. Its main line extends to Appalachia, where it connects with the Virginia & Southwestern and Interstate railroads, and thence to Norton, where it connects with the Norfolk & Western. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, which operates north and west of the Ohio River, maintains connections with the Louisville & Nashville.

The following map illustrates the situation.

The distances are approximately as follows: From Appalachia to St. Charles, 25 miles, via Virginia & Southwestern; from Appalachia to Pennington Gap, 24 miles, via Louisville & Nashville; from Pennington Gap to Pocket, 3 miles, via Louisville & Nashville (branch); from Pocket to St. Charles, 4 miles, via Virginia & Southwestern; from Appalachia to Stonega, 5 miles, via Interstate Railroad; from Appalachia to Roaring Fork, 8 miles, via Interstate Railroad.

There are numerous coal mines at and in the vicinity of St. Charles, in what is known as the Black Mountain district. Complainants' mines and plants are in what is known as the Appalachia district, which extends from Black Mountain to and including Norton, about eleven miles east of Appalachia. What is known as the Toms Creek district lies some distance farther to the east, but no points in that district are involved in this proceeding.

The Louisville & Nashville Company groups all this territory from and including St. Charles to and including Norton, except the points where complainants' mines and plants are located, on the same basis of rates to western destinations up to the Ohio River. To points beyond the Ohio River there is a differential in favor of St. Charles against Appalachia, which is admitted to be an error that should be corrected.

Complainants' coal and coke are shipped from Keokee via the Virginia & Southwestern, and from Stonega, Roaring Fork, and other points, via the Interstate Railroad, to Appalachia and there delivered to the Louisville & Nashville for destination points. For this transportation service to Appalachia the originating carriers are paid a local rate of 10 cents per ton, and the Louisville & Nashville is paid the Appalachia rates thence to destination points. Complainants are thus charged 10 cents per ton more to reach the same markets than are their competitors who are located at the other points named.

The Louisville & Nashville Company owns a branch line from Pennington Gap north for a distance of about 3 miles to a point where it connects with the Virginia & Southwestern (now owned and controlled by the Southern Railway). From this point it reaches the mines at and in the vicinity of St. Charles over the rails of the Virginia & Southwestern Company.

For some time prior to 1903, under an agreement with the Virginia Coal & Iron Company (now the lessor of the Stonega Coke & Coal Company), the Louisville & Nashville Company delivered empty cars from Appalachia to the mines and plants at Stonega, Roda, Osaka, and Arno and returned the loaded cars to Appalachia, and transported the same thence to destination points at the regular Appalachia rates. A controversy arose between the parties as to the character and extent

of the agreed service, and thereupon the Louisville & Nashville withdrew from the arrangement and discontinued the service entirely.

The Louisville & Nashville declines to perform the service it formerly rendered and refuses to establish with the Interstate Railroad Company through routes and joint rates on coal or coke from complainants' mines and plants. The traffic is reshipped from Appalachia on new or original billing, and can not be billed through to destination from the mines or plants.

In their petition complainants allege that it is "unreasonable and unjust and discriminatory" to charge them on their coal and coke 10 cents per ton more than is charged their competitors to the same markets. They ask that through routes and joint rates be established from their mines and plants to Louisville and Cincinnati, and to other designated points on the Louisville & Nashville and on the Cleveland, Cincinnati, Chicago & St. Louis lines, and that such joint rates shall not exceed rates contemporaneously in force from Norton, Appalachia, and St. Charles.

In explanation of its refusal to establish through routes and joint rates with the Interstate Railroad, the Louisville & Nashville avers (1) that the Interstate Railroad Company is not a common carrier within the meaning of the act to regulate commerce, but is merely a plant facility, and (2) that the rates it now receives for the transportation of complainants' traffic are so low that to divide the same with the Interstate Railroad Company would deprive it of just and reasonable compensation for the service it performs.

The Virginia & Southwestern Company avers that its rate of 10 cents per ton from Keokee to Appalachia is a low charge for the service, and insists that there should be no reduction.

Section 1 of the act to regulate commerce, after defining the term "transportation," as applied to common carriers, provides as follows:

> * * * and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.

By section 15 it is provided that—

> The Commission may * * * establish through routes * * * and may establish joint rates as the maximum to be charged and may prescribe the division of such rates * * * and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes * * * or joint rates.

The question first to be considered is whether the Interstate Railroad Company is a carrier subject to the provisions of the act to reg-

ulate commerce. The company was incorporated by special act of the legislature of Virginia in February, 1896. By its charter it was "authorized and empowered to locate, construct, operate, and maintain a line of railroad" from a point in Scott county, Va., through Lee and Wise counties, Va., to a point on the state line between Kentucky and Virginia, together with "such branch railroad or railroads from the said main line * * * as it may, from time to time, deem expedient; and also to locate, construct, operate, and maintain such railroad or railroads * * * as it may, from time to time, deem necessary for the accommodation of the public, or to connect with any other railroad that is now or hereafter may be constructed in or to any of said counties." It was further authorized "to acquire by lease or purchase, equip, maintain, and operate," a railroad theretofore constructed by the Virginia Coal & Iron Company in Wise county, and to acquire in the same manner, and to maintain and operate, a part of the South Atlantic & Ohio Railroad (now the Virginia & Southwestern) or any other railroad, and to connect any line it might construct or acquire with any other railroad then or thereafter constructed in any of said counties. It was also authorized to acquire, either by donation, purchase, or *condemnation proceedings*, all such lands and materials, as it might need "for right of way, depots, stations, freight yards, and other railroad purposes."

The maximum capital stock of the company was $1,000,000, but on December 8, 1910, the State Corporation Commission of Virginia allowed an amendment to the charter increasing the stock from $1,000,000 to $1,500,000.

The company was organized by the same persons who owned or were interested in the properties of the Virginia Coal & Iron Company. It thereupon acquired from that company, as authorized by the charter, a line of railway previously constructed from a connection with the Louisville & Nashville near Appalachia north to Stonega, a distance of between five and six miles, and thereafter built branches to Roda, Osaka and Arno.

After the abrogation of the aforesaid agreement between the Louisville & Nashville Company and the Virginia Coal & Iron Company, the Interstate Railroad Company acquired locomotives and other transportation equipment of its own, and built a line from Appalachia to Norton, and also branch lines to Roaring Fork and other points. Its purpose is stated to be to establish and operate a belt line to serve the coal and coke industries in the western part of Wise county, and to connect such industries with the various railway lines which penetrate this general territory, including the Louisville & Nashville and Virginia & Southwestern. The character of the service it now renders is shown by the following facts:

1. It operates about 30 miles of railroad and has 17 stations, of which 7 are shipping stations of the Stonega Coke & Coal Company. It has 5 locomotives, 3 passenger cars, and 94 freight cars—coal cars, box cars, and flat cars. It operates 10 passenger trains daily by schedule, and has a large passenger station at Appalachia with smaller stations at various other points.

2. It files tariffs with and reports to this Commission, as required by law of common carriers.

3. In addition to carrying the traffic of the Stonega Coke & Coal Company, it transports coal and coke for the Blackwood Coal & Coke Company, the Sutherland Coal & Coke Company, the Wise Coal & Coke Company, and the Colonial Coal & Coke Company, all of which are competitors of the Stonega Company.

4. It maintains through routes and joint rates with the Carolina, Clinchfield & Ohio Railroad Company to points reached by that line, and also with the Norfolk & Western Railway Company to Lamberts Point, Va.

5. It carried over 85,000 passengers in the year 1909, over 92,000 in the year 1910, and over 73,000 during the first nine months of the year 1911. Its gross receipts from all sources for 1910 amounted to $123,133.07, and its total expenses were $99,492.83. It is published as an originating, intermediate, or delivering carrier in tariffs filed with this Commission by various railroad companies, including the Atlantic Coast Line, the Alabama Great Southern, the Illinois Central, and the Louisville & Nashville. Of its freight revenue for the year 1910, 84.08 per cent was derived from shipments by the Stonega Coke & Coal Company, and 15.92 per cent from other shippers.

6. It is published in tariffs of the Louisville & Nashville Company, issued in 1910, as a participating carrier "on classes and commodities, except coal and coke," and it concurs in such tariffs. During the year 1911 passengers were carried from points in Kentucky to Stonega on through tickets sold by the Louisville & Nashville Company.

It is thus seen that the Interstate Railroad Company holds itself out to the public as a common carrier; it files tariffs with and makes reports to this Commission, required by law of common carriers, and is engaged in carrying interstate traffic, both passenger and freight; it maintains through routes and joint rates with various other carriers, and, except on coal and coke, with the Louisville & Nashville Company.

The history of the Interstate Railroad Company shows that the original purpose of its incorporators was to enable the persons interested in the lands of the Virginia Coal & Iron Company to develop their properties. Since 1903, however, the company has extended

its lines until it now owns and operates about 30 miles of railroad, and gives a general freight and passenger service. It serves industries on its main line and branches which are in no way connected with either the Virginia Coal & Iron Company or the Stonega Coke & Coal Company. The fact that the larger part of the freight it carries is for the Stonega Company does not determine its character to be that of a plant facility rather than a common carrier.

Questions relating to the ownership of carriers, in whole or in part, by large shippers over their lines, have been several times before this Commission. *In the Matter of Divisions of Joint Rates*, 10 I. C. C., 385, we said (p. 399):

> The mere fact that this road is to-day entirely owned by the largest individual shipper over it, or that it was originally organized and built for the purpose of doing the work of that shipper, is not, in our opinion, controlling against the legality of the transaction before us. While there may be grave objections to allowing shippers to build and operate railroads over which their traffic moves, the interstate commerce act contains no prohibition of that kind.

See also *Crane R. R. Co.* v. *P. & R. Ry. Co.*, 15 I. C. C., 248, 252, and *Crane Iron Works* v. *C. R. R. Co. of N. J.*, 17 I. C. C., 514, 518.

In the instant case it is not the complainant Stonega Coke & Coal Company, but the Virginia Coal & Iron Company, that owns nearly the entire stock of the Interstate Railroad Company. The Virginia Coal & Iron Company leases lands to the Stonega Coke & Coal Company, but it likewise leases lands to the Blackwood Coal & Coke Company, and to the Intermont Coal & Iron Company, and the Virginia Iron, Coal & Coke Company. The Keokee Coal & Coke Company and the Imboden Coal & Coke Company were lessees of the Virginia Coal & Iron Company until their properties were acquired by the Stonega Coke & Coal Company. All of said companies are competitors in the coal and coke business. The stockholders of the complainant Blackwood Coal & Coke Company have no interest in the stock of the Virginia Coal & Iron Company, the Stonega Coke & Coal Company, or the Interstate Railroad Company.

In *Manufacturers' Railway Co.* v. *St. L., I. M. & S. Ry. Co.*, 21 I. C. C., 304, this Commission, speaking to the question whether the complainant in that case was a common carrier, said (p. 312):

> The act to regulate commerce, limiting its application as it does to common carriers, was passed in full view and recognition of the common law under which the attitude and actions of the person, whether natural or artificial, determines whether or not he or it is in law a common carrier. Speaking in general terms, a carrier could become a common carrier by offering its services as such to the public upon first complying with the statutory or police requirement demanded of it by charter or otherwise. The test to be applied in determining whether a person is a common carrier really is whether he holds out, either expressly or by a course of conduct, that he will, so long as he has room, carry for hire the goods of every person indifferently who will bring goods to him to be carried. *Nugent* v. *Smith*, 1 C. P. Division 19, 27.

Tested by the authorities cited, as applied to the facts of record, we are of opinion and find that the Interstate Railroad Company is a common carrier subject to the provisions of the act to regulate commerce. We further find that complainants are entitled to have established by order of this Commission through routes for the transportation of their traffic over defendants' lines, and to have established just and reasonable rates as the maximum to be charged for such transportation.

What would be just and reasonable rates remains to be considered, and herein is involved the charge of discrimination. Complainants contend that under the present rate adjustment they are subjected to undue prejudice and disadvantage in favor of their competitors at Appalachia, Norton, and St. Charles.

So far as Appalachia and Norton are concerned, we do not think that undue discrimination is shown. Those points are on the Louisville & Nashville line, whereas the points where complainants' mines and plants are located are not on that line, but are served by the Interstate Railroad and the Virginia & Southwestern. The fact that the Louisville & Nashville maintains rates from points on its own line on a lower basis than rates in force from points served by other railroads, and which are not on its own line, if discrimination at all, is not, in our judgment, the character of discrimination which the statute condemns as undue or unreasonable.

The case of *Black Mountain Coal Land Company* v. *S. R. Co.*, 15 I. C. C., 286, is cited to support complainants' contention. That case involved rates on coal and coke from this same general territory. The Commission condemned as unreasonable a charge of 10 cents more per ton on shipments of coal from the St. Charles mines than from mines at Appalachia to the same destinations. But St. Charles and Appalachia are both on the same railroad, and that fact was not only recognized by the Commission, but was stated as one of the grounds for the conclusion reached.

Reduced to its last analysis, the insistence here is simply that the greater service rendered by the Louisville & Nashville Company in the transportation of coal and coke from Norton than it renders for the same rates in the transportation of coal and coke from Appalachia to the same destinations works discrimination against complainants, because the Norton mines thereby get the benefit of a service which complainants' mines on the Interstate Railroad do not receive.

We do not think the proposition is sound or that support for it is found in the ruling in the cited case.

The Black Mountain situation presents a different question. The St. Charles mines are not on the line of the Louisville & Nashville,

but are served by that company over the line of the Virginia & Southwestern under some sort of agreement between the two roads. The terms of the agreement are not shown, but it appears that the Louisville & Nashville pays the Virginia & Southwestern for trackage rights from a point called Pocket, the terminus of its branch line extending from Pennington Gap, to the mines at St. Charles. The distances from that point to the mines vary from 3 to 7 miles.

Objection is made that discrimination in favor of the St. Charles mines is not charged in the petition, but we do not think the objection well taken. Under the technical rules of pleading usually followed in courts of law there might be grounds for such objection, but we find no justification for it under the more liberal rules applied by this Commission. From the petition as a whole we think it clear that the charge of discrimination embraces the mines at St. Charles as well as those at Norton and other points in the Appalachia district. Besides, the entire situation was gone into at the hearing, and evidence was submitted which shows to some extent the service rendered by the Louisville & Nashville and Virginia & Southwestern to the mines at and in the vicinity of St. Charles, and no claim is made that undue advantage has been taken of any party to the proceeding.

The evidence is to the effect that the Louisville & Nashville delivers empty cars to the St. Charles mines and returns the loaded cars to its own line, without charge for the service either way, and that the Virginia & Southwestern does the same. The rates charged by both companies are the same as the rates from Appalachia. The mines have no engines of their own.

The service performed by the Louisville & Nashville for the St. Charles mines, as far as appears, is similar to the service formerly performed by that company for the mines on the Interstate Railroad under the agreement hereinbefore referred to; and, in addition to the expense of such service, the Louisville & Nashville pays the Virginia & Southwestern for trackage rights by means of which it reaches the mines at St. Charles.

The average length of haul covered by the service for the St. Charles mines is not materially different from the average distance between Appalachia and complainants' operations at Stonega and other points on the Interstate Railroad. In other respects the transportation conditions, so far as here appears, are substantially the same.

Briefly stated, the situation is this: The operations are all off the line of the Louisville & Nashville; the conditions of transportation are substantially the same as between the two fields; yet the Louisville & Nashville Company gives to the St. Charles operations a servi which it refuses to give to complainants' operations.

Complainants have expressed through their counsel a willingness to have the Louisville & Nashville Company operate over the Interstate Railroad and serve their mines in the same manner that it serves the St. Charles mines, and the record indicates that the Louisville & Nashville Company may not be averse to an arrangement of that kind. There is, however, no appearance for the Interstate Railroad, and nothing to indicate whether that company would agree to such an arrangement. As already stated, we are not informed of the terms of the agreement with the Virginia & Southwestern Railway Company under which the Louisville & Nashville reaches and serves the St. Charles mines.

Under all the circumstances and conditions we are of the opinion and find that there is undue discrimination against complainants in favor of their competitors at and in the vicinity of St. Charles, to the extent that the Louisville & Nashville Company renders a service to the St. Charles mines which under substantially similar circumstances and conditions it refuses to render to complainants' operations on the Interstate Railroad. The reasonableness of the rates for the transportation of coal and coke from this region to points west thereof has been gone into to some extent. Suffice it to say this question is involved in a separate proceeding now pending before this Commission and is not directly involved here.

In the present state of the record, however, we are unable to determine what the rates should be in order to remove the discrimination. It may be that the defendants will be willing to establish a service to and from complainants' mines and plants, on the Interstate Railroad, on the same basis as the service now in effect to and from the St. Charles mines, on the Virginia & Southwestern, and thereby remove the discrimination; and an opportunity will be given them to do so. Should they fail to reach a satisfactory adjustment, a further inquiry will be had by the Commission and such order made as may be found necessary and proper.

As has been already pointed out, complainants' operations at Keokee are on the line of the Virginia & Southwestern. In the light of what has been here said as to other points involved, and as to the general situation as well, we see no reason why defendants may not themselves establish joint rates and agree upon the division thereof from that point; and an opportunity will be afforded them to do so. If they can not reach a fair and proper adjustment as to the joint rates or as to the divisions thereof, the Commission will after further inquiry determine those questions.

Without now considering the reasonableness of the present grouping of the mines in this territory, defendants will be expected to remove the discrimination herein found to exist and to establish through

routes and joint rates for the transportation of coal and coke from the operations of complainants at and in the vicinity of Keokee on the Virginia & Southwestern, to the designated destination points in Kentucky, Ohio, and other states, as prayed for in the petition.

The case will be held open for such order or orders as may be found necessary in the premises.

INVESTIGATION AND SUSPENSION DOCKET NOS. 69, 69–A, 69–B, AND 69–C.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF LEMONS IN CARLOADS FROM POINTS IN CALIFORNIA TO POINTS IN COLORADO, UTAH, MONTANA, AND OTHER INTERSTATE POINTS.

Submitted February 26, 1912. Decided March 11, 1912.

Upon consideration of the facts disclosed by the record, the Commission finds that the proposed advance in the lemon rate from $1 to $1.15 per 100 pounds from points in California to points in Colorado, Utah, Montana, and other states has not been justified by the carriers. The $1 rate found reasonable and prescribed for the future.

A. F. Call and *Cassoday, Butler, Lamb & Foster* for California Fruit Growers' Exchange and allied associations.

C. W. Durbrow and *H. A. Scandrett* for Southern Pacific Company; Atchison, Topeka & Santa Fe Railway Company; San Pedro, Los Angeles & Salt Lake Railroad Company; Union Pacific Railroad Company; and Oregon Short Line Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Chairman:*

Rates applicable to the transportation of lemons from points of production in California to various interstate destinations in other parts of the United States are carried, for the most part, in two

tariffs, one of which may be designated as the transcontinental tariff and the other as Gomph's tariff. The transcontinental tariff includes Utah common points and all territory to the east. Gomph's tariff applies to Oregon, Washington, Idaho, Wyoming, Montana, and certain points in North Dakota and South Dakota, and perhaps some other territory.

Generally speaking, blanket rates have applied upon both oranges and lemons to most points in both the transcontinental tariff and in Gomph's tariff.

For some years previous to November, 1909, the rate upon lemons in both these tariffs had been $1 per 100 pounds, but at that time an attempt was made to advance this rate to points covered by transcontinental tariff to $1.15 per 100 pounds. This advance was attacked by shippers, and after an extended investigation the Commission finally held that the advance was improper and that the rate of $1 should be restored; but, at the same time, carriers were permitted to increase the minimum applicable to the shipment of lemons. *Arlington Heights Fruit Exchange* v. *S. P. Co.*, 19 I. C. C., 148; 22 I. C. C., 149.

At the time this advance was sought to be made in the transcontinental tariff no change was made in Gomph's tariff, but, effective December 9, 1911, a tariff was filed advancing the lemon rate to points covered by that tariff from $1 to $1.15. Upon protest from shippers, these advances were suspended by the order of the Commission, and are here the subject of investigation.

Since the advance was made subsequent to January, 1910, the burden of sustaining the reasonableness of the advanced rate is upon the carriers, who rely for that purpose mainly upon two propositions.

1. It is urged that no possible distinction can be made in the rate between oranges and lemons in the territory now under consideration, and that since the rate on oranges is $1.15 the rate on lemons should be the same.

In considering the transcontinental tariff we found two points of distinction between the transportation of lemons and that of oranges, in that the average haul was from 400 to 500 miles less in case of lemons, and, further, in that the loading of lemons in collapsible bunker cars might properly be much heavier than the loading of oranges. For these reasons we sustained a rate on lemons of $1 as compared with a rate of $1.15, which had been previously approved by the Commission as reasonable in the case of oranges.

In the present case the average haul is as great in case of lemons as in that of oranges. The difference in loading may exist here as to eastern destinations, and that constitutes a very substantial difference in the carload transportation of the two commodities. It

should, however, be noted that even though there were no distinction, it would not for that reason follow that a rate of $1 for the transportation of lemons would be reasonable, for, while there is in effect a rate of $1.15 upon oranges from the same points of origin to the same destinations, that rate has never been approved by this Commission, nor do we at this time either approve or disapprove it.

2. The second proposition of the defendants involves an application of rates established by this Commission for the transportation of oranges from points of production in Florida up to so-called base points. It is said that the Commission has established as reasonable a rate of $1 per 100 pounds from points of production to Salt Lake City; and that if the gathering rates fixed by the Commission in the Florida case were applied from Salt Lake City to the points of destination, the result would be in nearly all cases a higher charge than $1.15.

But this proposition is even less convincing than the first; for, in the first place, if this Commission had been considering the Salt Lake rate entirely by itself and not as a part of a great blanket, the integrity of which both shippers and carriers were most solicitous to maintain, we should undoubtedly have established a much less charge than $1 to Salt Lake City and Ogden; and, in the second place, it is difficult to see what analogy there can be between a proper gathering charge upon these roads of Florida, with but little freight traffic except that contributed by the fruit and vegetable industries, and the service from Ogden and Salt Lake City over these lines, many of which are among the strongest in the country.

If any use whatever is to be made of the rates fixed by the Commission up to Florida base points, they should be applied from point of origin to final destination.

A table was introduced by the defendants showing the actual movement of lemons and of oranges under Gomph's tariff for the calendar year 1911. From this it appears that the average number of miles over which the shipments actually moved from the point of origin to destination in case of lemons was 1,799; but the statement also shows that in many, and indeed most, instances the route traveled was not the reasonably direct one, but a circuitous one. Thus, there were four carloads from practically the same point of origin to Butte, the distances covered being 1,661, 1,224, 1,280, and 2,086 miles. The using of the longer route very much increases the distance which should be used in determining a proper rate. The shippers who were present upon the hearing insisted, and the defendants did not seriously deny, that 1,400 miles would be a fair statement of the average haul under Gomph's tariff.

If the mileage scale established by the Commission in the Florida case were to be extended to 1,400 miles, although, manifestly, the increase should be less rapid in case of that great distance than for a distance of 500 miles, which was the extent of the Florida scale, the resulting rate would be 97 cents per 100 pounds.

If, therefore, it be assumed that this Commission, in order to be consistent, should apply its Florida scale to this territory, it follows that $1 is too high.

The shippers introduced upon the hearing testimony comparing the rate of $1 on lemons with rates which are voluntarily applied to other similar commodities from producing points in California to a great number of these same destinations. It was said that Great Falls, Mont., was a fairly typical point, and the following statement gives the figures to that station, the haul being approximately 1,400 miles.

Commodity.	Kind of car.	Minimum.	Rate.	Freight.
		Pounds.		
Lemons	Refrigerator	28,224	$1.00	$282.24
Apples	do	30,000	1.00	300.00
Melons	do	24,000	.80	192.00
Fresh vegetables	do	20,000	.95	190.00
Vegetables, n. o. s	do	24,000	.80	192.00
Deciduous fruit	do	24,000	1.15	276.00

It will be seen that only deciduous fruits take a higher rate than lemons, and that here, owing to the lighter loading, per-car earnings are less.

Upon a consideration of the whole situation we are of the opinion and find that the advance has not been justified by the carriers, that rates not exceeding $1 per 100 pounds would be reasonable between the points involved, and that such rates should not be exceeded for the future. If collapsible bunker cars are presented for loading with the bunkers thrown up, carriers may by their tariffs fix such minima as will require the loading of these cars to their full capacity, not, however, exceeding two tiers in height.

An order will be issued accordingly.

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, AND HENRY B. SCHREIBER, CONSTITUTING THE RAILROAD COMMISSION OF LOUISIANA,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.

Submitted January 16, 1912. Decided March 11, 1912.

The rates from Shreveport, La., to points in eastern Texas are higher than are maintained from Dallas, Houston, and other cities within Texas to such points under substantially similar circumstances and conditions. This complaint attacks the rates from Shreveport as unreasonable and as discriminatory when compared with Texas intrastate rates of the same carriers, *Held:*

1. That the present class rates out of Shreveport to certain points in Texas on the Texas & Pacific Railway, and on the Houston, East & West Texas Railway, are unreasonable, and reasonable rates are prescribed for the future.

2. That the present relation of rates gives an undue preference to the Texas cities in question and effects an unlawful discrimination against Shreveport, and the carriers ordered to cease and desist from charging higher rates upon any commodity from Shreveport to Dallas or Houston or points intermediate thereto than are contemporaneously charged by them for the carriage of such commodity to equidistant points from Houston or Dallas toward Shreveport.

3. That if a state, by the exercise of its lawful power, establishes rates which the interstate carrier makes effective upon state traffic, that carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions upon interstate traffic. To say that an interstate carrier may discriminate against interstate commerce because of the order of a state commission would be to admit that a state may limit and prescribe the flow of commerce between the states.

4. That section 3 of the act, forbidding undue discrimination in favor of or against any person or locality, applies not only as to two interstate hauls but also as to two hauls one of which is interstate and the other intrastate, and the fact that the carrier's rates in the latter case are established by a state commission does not relieve the carrier of the paramount duty, which rests upon it irrespective of its obligation to the state, to so adjust its rates that, as to interstate traffic, justice will be done between communities regardless of state lines. The effective exercise of its power affecting interstate commerce makes necessary the assertion of the supreme authority of the national government, and Congress has appropriately exercised this power in the provisions of the act touching discrimination.

5. That the provision in section 1 that the act shall not apply to commerce wholly within a state was intended as a recognition of the fact that Congress was not assuming to regulate transportation entirely within the borders of a state and does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states and thus violate the express prohibition of the act against discrimination affecting interstate commerce.
6. That the policy of denying to Shreveport similar privileges in the concentration of cotton as are accorded to Texas cities is also discriminatory, and the carriers will be ordered to make applicable at Shreveport whatever lawful practices obtain in this connection at Texas points on defendant's lines under like condition.

Walter Guion, *R. G. Pleasant*, *W. M. Barrow*, *J. J. Meredith*, *George T. Atkins, jr.*, and *Luther M. Walter* for complainants.

Baker, Botts, Parker & Garwood, *H. A. Scandrett*, and *F. C. Dillard* for Houston & Shreveport Railway Company and Houston, East & West Texas Railway Company.

S. H. West, *E. B. Perkins*, *Hiram Glass*, *W. F. Murray*, and *Roy F. Britton* for St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; and Eastern Texas Railroad Company.

A. S. Coke, *A. H. McKnight*, and *J. L. West* for Missouri, Kansas & Texas Railway Company of Texas.

J. S. Hershey for Gulf, Colorado & Santa Fe Railway Company; Texas & Gulf Railway Company; and Gulf & Interstate Railway Company.

T. J. Freeman, *H. G. Herbel*, and *N. M. Leach* for Texas & Pacific Railway Company and International & Great Northern Railroad Company.

John A. Smith for New Orleans Cotton Exchange and New Orleans Board of Trade, interveners.

C. W. Hayward for New Orleans Board of Trade, Limited, and Wholesale Grocers' Association of New Orleans, interveners.

H. H. Haines for Galveston Commercial Association, intervener.

R. B. Walker for Jefferson, Tex., interests, interveners.

T. L. Torrans for Torrans Manufacturing Company, intervener.

J. T. Webster for cotton shipping interests of Pittsburg, Tex., interveners.

Leo Krouse for Texarkana Board of Trade, intervener.

E. W. Anderson for Monroe Progressive League, intervener.

E. S. Hicks for Tenaha, Tex., interests, interveners.

E. H. Carter and *J. L. Williams* for east Texas shippers, interveners.

W. R. Crawford for Shelby county, Tex., interests, interveners.

H. C. Wiley for Garrison, Tex., interests, interveners.

J. L. Chadwick for Penola county, Tex., interests, interveners.

REPORT OF THE COMMISSION.

LANE, *Commissioner:*

This proceeding places in issue the right of interstate carriers to discriminate in favor of state traffic and against interstate traffic. The gravamen of the complaint is that the carriers defendant make rates out of Dallas and other Texas points into eastern Texas which are much lower than those which they extend into Texas from Shreveport, La. A rate of 60 cents carries first class traffic to the eastward from Dallas a distance of 160 miles, while the same rate of 60 cents will carry the same class of traffic but 55 miles into Texas from Shreveport. For further illustration of the rate situation reference is made to the appendix of this report.

The railroad commission of Louisiana has brought this proceeding under direction of the legislature of that state for two purposes: (1) To secure an adjustment of rates that will be just and reasonable from Shreveport into Texas; and (2) To end, if possible, the alleged unjust discrimination practiced by these interstate railroads in favor of Texas state traffic and against similar traffic between Louisiana and Texas.

The railroads deny that the rates out of Shreveport are unreasonable, but place their defense mainly upon the proposition that they are compelled by the railroad commission of Texas to effect the discrimination here involved.

POLICY OF THE TEXAS COMMISSION.

The railroad commission of Texas, while not made a party to this proceeding, was notified of the hearing but was not represented thereat. The position which it takes, however, appears from the following letter which was incorporated in the record:

AUSTIN, TEXAS, *September 12, 1911.*

Mr. H. B. PITTS,

Secy. Progressive League, Marshall, Texas.

DEAR SIR: We beg to acknowledge the receipt of your letter of the 9th inst. with which you inclose letter from Mr. A. T. Kahn, of Shreveport, to Mr. W. L. Martin, of your city, with reference to securing a reduction of rates on classes from Shreveport, and we note your request for a statement from this commission in order that you may properly understand the matter involved, and in reply you are advised:

For the rates referred to from Shreveport to Texas points to be reduced would, in the opinion of this commission, be very much against the interests of the Texas jobber whom it has been the endeavor of this commission to protect, and by way of explanation we will state:

Shreveport enjoys now, and has for years past, very low carload rates from northern and eastern points, much lower than the carload rates on the same commodities from the same points to Texas jobbing points. These carload rates in, plus their local rates out, to Texas points gave them, of course, an advantage over the Texas jobber, and to offset this the commission adopted an adjustment of rates which you will find on page 263 of our nineteenth annual report, copy

of which is being mailed to you under another cover. For the local rates to be now reduced from Shreveport to Texas points would tend to counteract the effect of the commission's action, and to place the Texas jobber at the same disadvantage under which he previously labored.

Yours, respectfully, ALLISON MAYFIELD,
Chairman.

This letter supports on the one hand the theory of the Louisiana Commission that the Texas Commission is acting *in loco parentis* to the jobbing interests of Texas, and on the other hand supports the theory of some of the carriers justifying the higher local rates out of Shreveport upon the ground that the through rate from point of origin in the north and east to Texas, when made up of the rate to Shreveport plus the local out of Shreveport, is not unreasonable. (See appendix.)

This latter contention has been made before the Commission at various times, and we have uniformly held that a carrier could not impose an unreasonably high local rate upon any community because of the advantages that it properly enjoyed for securing low inbound rates. See *Commercial Club of Omaha* v. *C., R. I. & P. Ry. Co.*, 6 I. C. C., 675; *Daniels* v. *C., R. I. & P. Ry. Co.*, 6 I. C. C., 458; *Eau Claire Board of Trade case*, 5 I. C. C., 293; *Savannah Bureau of Freight & Transportation case*, 8 I. C. C., 377.

It is not the function of a railroad to equalize the commercial advantages of cities. If Shreveport is so situated by reason of her position on the Red River and her proximity to the Mississippi that the railroads serving her are justified in extending to her inbound rates which are lower than those extended to Dallas and other cities in Texas, this is her advantage of which she may take full benefit. The carriers may not say that they will absorb in the outbound rates such advantages as Shreveport has upon her inbound rates. Railroads may assume that they have the right to control the destinies of cities and limit their jobbing territory or expand it as they see fit, but this is not a policy consistent with the theory of governmental regulation. If the inbound rates to Shreveport are compelled by natural conditions the discrimination in her favor is not undue. If however, this is an artificial relation established by the railroads, it is unlawful. If natural, the railroads certainly should not destroy it. If artificial, it never should have been established and should now be removed. The act to regulate commerce is the outgrowth of a popular conviction that the railroads when unhampered by restrictive law attempted successfully to prescribe and define the channels of commerce in such way as to favor certain localities, industries, and individuals. By the institution of this act Congress substituted for the regulation of trade by common carriers the regulation of common carriers by the government in accordance with certain

prescribed rules to be applied as to acertained conditions. We do not here pass upon the relation between the rates into Shreveport from the north and east and those extended by the carriers to Texas points. If Texas communities have just reason to complain of this relationship which has been created by the carriers, hearing will be given them upon this matter and the full power of the Commission exercised to correct any wrong which may exist in this situation.

There appears to be little question as to the policy of the Texas commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that commission, which are quoted at length in the record, evidences that the Texas commission believed that the interstate carriers operating from the north and the east into Texas were pursuing a policy hostile to the development of that state. The Texas commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other states and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind the Texas commission sought to establish a Texas policy and to make the railroads within that state contribute in the manner believed by her own people to best subserve their own interests. Accordingly we find in the fifth annual report of that commission (page 5) the following:

To Texas as a whole it is of the most vital concern that there should be within her limits at proper places jobbing and manufacturing establishments. Besides adding to the citizenship of the state a desirable population and furnishing employment to persons already in our midst and enhancing the taxable values of the state, and, as a consequence, under wisely administered government, aiding in ultimately reducing the rate of taxation, and besides the home market they afford to the tiller of the soil and other producers, including manufacturers, for their products, if men, in Texas, having the capital to engage in a wholesale business or in a manufacturing enterprise, for the success of which natural conditions are favorable, they have as much right to invest their means in such business or enterprise as a man in Illinois or Missouri has to embark in such business or enterprise in his state. Some of the Texas lines of railway, constituting parts of interstate systems of railway interested in long hauls, appear to be hostile to a policy which would foster Texas jobbing and manufacturing interests, while other lines manifestly favor such a policy. Outside cities bring to bear every pressure they can to coerce all Texas lines into a course favorable to their interests and adverse to the interests of Texas cities with respect to jobbing and manufacturing. * * * This commission has always had in mind the securing of relatively just state and interstate rates, with a view of enabling Texas merchants and manufacturers to do business in competition with outsiders.

It was apparently not the prime desire of the Texas commission that rates within the state should be low, but rather that the interstate roads should not make rates so low upon commodities which

Texas could supply to herself as could hinder the growth of her cities as manufacturing and distributing centers.

> This commission has often stated to the freight agents and traffic managers in their meetings with it that if the railroad companies engaged in interstate shipment would make and maintain rates which would be fairly compensatory to them on such shipments this commission would do all in its power by its rates to secure them reasonable revenue on their railroad investments in this state, and we now repeat that statement, but this suggestion contemplates good faith on both sides in the making and maintenance of rates. (Fourth annual report, page 19.)

Again we find the thought expressed in the letter from the chairman of the Texas state commission, quoted above, expressed in the report of that commission for 1896 (page 10), wherein it is said:

> The commission did not feel disposed when it gave the notice in the form stated, nor has it ever been inclined to deny to the railroad companies such rates as are reasonably compensatory even though to do so would necessitate an increase in rates; yet as a condition precedent to anything like a general increase in state rates the commission was and is determined that the railroad companies shall show that they received reasonable compensation for transportation by them of interstate freights in order that it may be seen by the commission that they are not sacrificing their revenues on interstate hauls and seeking to recoup their losses against the people of Texas. * * * In making the demand there was no injustice to the railroads, for, viewed simply as roads operating in the state, it is to their interest to favor our policy of bringing goods from abroad into Texas cities in carload quantities and in distributing them from the jobbing houses in such cities in less-than-carload quantities among the retailers. As the freight charges they receive on local less-than-carload shipments in the state added to what they receive in the division of through rates on carload shipments to the Texas jobber usually amount to more than they receive in the division of through rates on less-than-carload shipments from a jobber outside the state to a retailer in the state; and it can be shown to be to their advantage to pursue a policy favorable to the development of manufacturing in Texas. While by pursuing, along the lines indicated, a course favorable to the upbuilding of Texas jobbing and manufacturing enterprises, the interests of Texas roads considered as such would be subserved, yet, constituting, as some of the Texas roads do, parts of interstate systems, the interests of the systems rather than the interest of the Texas lines are too often regarded. Here lies the main difficulty, in our opinion, in securing a just arrangement of interstate rates. It can be met either by those lines which are not dominated by outside influences taking a firm stand and cooperating with this commission to compel the other lines to act justly toward Texas interests, or, if adjustments can not be made by consent, by the Interstate Commerce Commission, with an intelligent grasp of the situation, when appealed to, making the proper adjustment.

Quotations need not be multiplied to demonstrate that Texas has a policy of her own with respect to the protection of home industry which has been made effective by consistent and vigorous action on the part of her commission. If interstate carriers were determined upon a long-haul policy which tended to make the people of Texas dependent upon the merchants and the manufacturers of other states

the Texas commission frankly declared that it would meet this policy in such way as to save the interests of Texas from being at the mercy of these interstate carriers. At the time when these reports were written, from which quotation has been made, it is to be noted that the Interstate Commerce Commission lacked the powers which it now has; rates were unstable, competition was intense by means of rebates, and it is not unfair to say that there was no system of rate-making into the southwest upon which the Texas commission could rely. That interstate rates from northern points are not now so low as to cause the Texas commission to indulge the fears which possessed it in earlier years is made manifest by the fact that it sought before this Commission within two years the reduction of class rates from St. Louis. See *R. R. Commission of Texas* v. *A., T. & S. F. Ry. Co.*, 20 I. C. C., 463. This was a proceeding in the interest of the consumers and not primarily for the protection of jobbing interests.

That Texas, however, has not abandoned her purpose to retain so much of her trade within her own state as is possible is evidenced by what is known as the Texarkana rate adjustment. See *Nineteenth Annual Report, R. R. Commission of Texas*, page 263. By this adjustment the normal scale of rates applying upon a large number of articles, including carload and less-than-carload shipments of all articles which are, in carloads, subject to fifth class and class A, B, C, D, and E rates, was reduced by 20 per cent: 1. Between points on the Texas & Pacific Railway and the Denison & Pacific Suburban Railway east of and including Denison, Sherman, and Dallas, but not from Texarkana, Waskom, and intermediate points on the Texas & Pacific Railway. 2. Between points on the Missouri, Kansas & Texas Railway of Texas east of and including McKinney, but not from Jefferson, Waskom, and intermediate points on the Missouri, Kansas & Texas Railway of Texas. 3. Between points on the St. Louis Southwestern Railway of Texas east of and including Sherman, Plano, and Dallas, and north of and including Tyler, but not from Texarkana.

Then follows this significant language:

> **Ruling.** Rates provided in this adjustment are not available on shipments to or from Texarkana.

Thus the interior cities of Texas were protected against what was doubtless deemed the unfair competition of Texarkana, a border city, and other similarly situated points.

One illustration of the policy pursued by the Texas commission by which it is claimed advantage is given to Texas cities as against Shreveport is in the matter of the concentration of cotton. We are asked to establish concentration rules at Shreveport upon Texas cotton. The record discloses extensive correspondence upon this

question between the railroads and the Texas commission, a portion of which is here given.

The HONORABLE RAILROAD COMMISSION OF TEXAS,
Austin, Tex.

GENTLEMEN: We have received requests from cotton men along our line south of Shreveport, also on the Texas & Gulf and Timpson & Henderson, also merchants at Shreveport, for the establishment of a concentrating privilege at Shreveport on cotton from the points indicated.

We have hesitated so far to establish any such privilege, feeling that it might not meet with the entire approval of the railroad commission of Texas. However, we are advised that such privilege would give a better market for cotton to the producers along the lines indicated, and as such would be an advantage to the Texas farmer.

Under the circumstances, if you will advise us that you do not disapprove of the plans, we will take steps to see if we can not meet the views of our cotton friends in regard to this feature.

Yours, truly, J. R. CHRISTIAN, *G. F. A.*

Under date of October 6, 1910, Chairman Mayfield wrote Mr. Christian as follows:

Referring to your letter of September 15th, with respect to the contemplated establishment by your line of a concentrating privilege at Shreveport on cotton from points on your line south of Shreveport, and also from Texas & Gulf and Timpson & Shreveport points, we beg to advise you that your communication has been duly considered by the commission and we beg to state that the establishment of such an arrangement would not meet with the approval of this commission.

The policy of the Texas commission is, moreover, not without opposition within that state. Galveston, which enjoys low water rates, claims that for this reason she is the object of discrimination, a differential having been placed against distribution from that city. The Galveston Commercial Association has brought suit against the Texas railroad commission complaining of this condition. In that suit Galveston has been successful in the lower court, and it was stated at the hearing in this case that if the Supreme Court sustained the lower court it would probably mean a complete readjustment of rates in Texas; that, in fact, it would be necessary for the Texas railroad commission to make its tariffs upon an entirely different plan, and that the railroads would be prepared to suggest new tariffs to the Texas commission which would alter the relation, not only between Galveston and other Texas cities, but between Shreveport and Texas cities.

THE PROBLEM RAISED.

The petition of the complainants is that this Commission "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances."

With this petition we can not comply unless such power has been granted us under the first, third, and fifteenth sections of the act to regulate commerce. We have no power to require an interstate carrier to put into effect from an interstate point a state-made schedule of rates; our power is limited to condemning unreasonable rates and fixing maximum rates that are in our judgment just and reasonable. Therefore we may not say that because a carrier has in effect state-made rates upon state traffic such rates shall be established by it upon interstate business, for, to put the matter bluntly, the rates fixed by a state commission are not prescribed as a standard by the act of Congress governing interstate rates of transportation. The Texas rates as such, therefore, we may not prescribe. If, however, they stand the test of reasonableness they may be adopted.

Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a state by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining state?

This is an appeal to the powers lodged in this Commission under the third section of the act—that provision which is aimed at the destruction of undue preference and advantage. We thus meet directly the most delicate problem arising under our dual system of government. Congress asserts its exclusive dominion over interstate commerce; the state asserts its absolute control over state commerce. The state for its own purposes establishes rates designed to protect its own communities and promote the development of its own industries. These rates are adopted by the interstate carriers upon state traffic but are not adopted upon interstate traffic. Thus arises a discrimination in favor of communities within the state, and interstate commerce suffers a corresponding disadvantage. May this Commission end such discrimination by saying to the interstate carrier: "You may not distinguish between state and interstate traffic transported under similar conditions. If the rates prescribed for you by state authority are not compensatory upon this specific traffic as to which discrimination is found the burden rests upon you, irrespective of your obligation to the state, to so adjust your rates that justice will be done between communities regardless of the invisible state line which divides them." To which we are compelled to answer, that the effective exercise of its power regarding interstate commerce makes necessary the assertion of the supreme authority of the national government, and that the Congress has appropriately

exercised this power in the provisions of the act to regulate commerce touching discrimination.

POWER AND POLICY OF CONGRESS.

The theory of our constitution is that a state may not live unto itself alone, either politically or commercially. Under the articles of confederation the several states reserved to themselves certain powers which in their exercise made necessary "a more perfect union." This was established under the constitution, in which, as an outgrowth of experience, it was provided that Congress should have the power "to regulate commerce with foreign nations and among the several states." It is unnecessary to trace the growth and expansion of the national power under this provision of the organic law. With almost each decade some problem has arisen which has brought from the Supreme Court of the United States a fuller interpretation of this power granted to Congress, and underneath each one of these decisions may be found the fundamental doctrine of governmental necessity. The power granted to regulate a commerce by wagon and the sailing ship has been found adequate for the necessities of a national life to which the railway and the telegraph are essential. Under the protection and authority of the federal government our commerce has known no state lines, we have enjoyed freedom of trade between the people of the various states, and our railroad systems have been constructed to convey a national commerce. While chartered by the states they have become the interstate highways of the United States. They are the roads of the whole people and not of any part or section of the people. Congress has commanded that all carriers which engage in interstate commerce shall be linked together as through routes; that they shall provide reasonable facilities for operating such routes; that they shall establish and enforce just and reasonable classifications of property for transportation with reference to which rates, tariffs, regulations, or practices may be prescribed (section 1); that they shall construct switch connections with any lateral, branch line of railroad, or the private sidetrack of any shipper tendering interstate traffic for transportation (section 1); that they shall not discriminate between persons (section 2), or between connecting lines (section 3); that in time of war or threatened war preference shall be given to military traffic; that the books and files of such carriers shall be open to the inspection of the Federal Commission (section 20); that the Commission may have power to prescribe just and reasonable rates, classifications, regulations, and practices; fix the division of joint rates in certain cases (section 15); prescribe a uniform system of accounts and the manner of keeping the same (section 20); and that the initial carrier shall be responsible for loss or dam-

age to property caused by it or by other carriers over whose lines such property may pass (section 20).

By all these provisions of the law, as by others, Congress has clearly manifested its purpose to unite our railroads into a national system. The law acts only on those which do an interstate business; but in the conveying of property destined from a point in one state to a point in another this brings within the control of Congress all such carriers as do not exclude themselves from participating in such traffic.

Whilst every instrumentality of domestic commerce is subject to state control, every instrumentality of interstate commerce may be reached and controlled by national authority so far as to compel it to respect the rules for such commerce lawfully established by Congress. (Mr. Justice Harlan, *Northern Securities case*, 193 U. S., 197.)

While with reference to some of them (instrumentalities of commerce), which are local and limited in their nature or sphere of operation, the states may prescribe regulations until Congress intervenes and assumes control of them; yet, when they are national in their character, and require uniformity of regulation affecting alike all the states, the power of Congress is exclusive. (Mr. Justice Field in *Gloucester Ferry case*, 114 U. S., 203, 204.)

CONSTRUCTION OF THE LAW.

The power of Congress being unquestioned, we find that as carriers of interstate commerce the defendants under the act (section 3) may not give any undue or unreasonable preference or advantage to any locality or any particular description of traffic in any respect whatsoever, or subject any locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Does this mean that as between two points doing interstate business the interstate carrier shall not prefer one over the other, but that as between a point in one state and a point in another state the interstate carrier may unduly discriminate so as to prefer a point in one state as against the other? If this is the meaning of the section, the law has recognized that an interstate carrier may properly discriminate within a state as against interstate commerce. Such construction is, however, entirely inconsistent with the letter of the statute and with its purpose. A clearer and fairer, and to our minds the only reasonable reading of the law, is one which credits Congress with the intention of stopping all undue discrimination by interstate carriers. It may be said without exaggeration that it is the paramount duty of interstate carriers under this act to avoid discrimination. The penalties placed against any course of policy leading to such result are severe. There can be no justification for granting to one locality an advantage over another not arising out of difference in transportation conditions. The orders of a state commission enforcing a discrimination against interstate commerce are not acceptable under the law.

Even though a power exerted by a state, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion of authority will be a direct burden on such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on. (Mr. Chief Justice White, *Pullman Co.* v. *Kansas*, 216 U. S., 56, 65.)

No state by the exercise of, or by the refusal to exercise, any or all of its powers may substantially discriminate or directly regulate interstate commerce or the right to carry it on. (Mr. Justice McKenna in *Oklahoma* v. *Kansas Natural Gas Co.*, 221 U. S., 261.)

We come then to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is, Is there a real or substantial relation or connection between what is required by these acts in respect of vehicles used in moving intrastate traffic and the object which the acts obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movement? Or, stating it in another way: Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a real or substantial sense by applying the requirements of these acts to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate. If the answer to this question, as doubly stated, be in the affirmative, then the principal question must be answered in the same way. And this is so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce. (Mr. Justice Van Devanter, *Southern Ry. Co.* v. *United States*, 222 U. S., 20, 26.)

If a state by the exercise of its lawful power establishes rates which the interstate carrier makes effective upon state traffic, such carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions upon interstate traffic.

LANGUAGE OF THE ACT.

It is further said that the carriers within the state of Texas are protected from the provisions of the act to regulate commerce by that clause in its first section, reading:

Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid.

This language was intended as a recognition of the fact that Congress by this act was not assuming to regulate transportation en-

tirely within the borders of a state. It does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states. The phrase "among the several states," as recently defined by Mr. Justice Van Devanter with nice precision, "marks the distinction for the purpose of governmental regulation between commerce which concerns two or more states and commerce which is confined to a single state and does not affect other states, the power to regulate the former being conferred upon Congress and the regulation of the latter remaining with the states severally." *Mondou* v. *N. Y., N. H. & H. R. R. Co.*, 223 U. S., 1, decided January 15, 1912. It is not merely the commerce which is confined to a single state which is state commerce, but that which "does not affect other states." The state goes untouched as to its railroad policies so long as they do not trench upon the interstate field. Congress does not say that state rates shall be reasonable or that rebates upon state traffic shall be unlawful or that discrimination between localities within the state shall not be allowed. To reach these matters, so far as they do not affect interstate commerce, is the prerogative of the state, which is recognized and protected by the language of the act quoted.

But, as to the nation, Congress has prohibited carriers of interstate commerce from giving undue preference or advantage to one community over another. To say that this prohibition permits such carriers to exclude a city within the state of Louisiana from doing business upon equal terms with the cities in Texas is to distort the plain meaning of the act and make the regulation of interstate commerce farcically ineffective. To say that interstate carriers may so discriminate because of the orders of a state commission is to admit that a state may limit and prescribe the flow of commerce between the states.

And if one state may exercise its power of fixing rates so as to prefer its own communities all states may do so. There would thus arise a commercial condition more absurd and unbearable than that which obtained prior to the constitution when each state sought to devise methods by which its commerce could be localized. How utterly incongruous the result if the interstate carriers of Ohio should be allowed to make rates within that state which would so confine the commerce of its communities as to exclude on equal terms that of Buffalo or of Pittsburgh; and what national system of regulation could there be if interstate commerce could be discriminated against after such fashion? Manifestly Congress has dealt with the railroads of the country as servants of a national commerce and has accordingly laid down the rule of fair play to which they must conform.

Congress passed this act with full knowledge and profound appreciation of those decisions of the Supreme Court in which it had been held that state commerce was that wholly within a state "and not affecting interstate commerce," as is fully shown by the Cullom report of 1886 out of which grew the act to regulate commerce. "While the decisions of the United States Supreme Court," says this report, "may not perhaps afford as conclusive an answer to this question (What is interstate commerce?) as to the preceding one, we believe they indicate very clearly what the view of that tribunal will be when it is called upon to more closely draw the line between that commerce which is wholly subject to state authority and that which is exclusively under the jurisdiction of Congress."

The report quotes this language from *Gibbons* v. *Ogden*, 9 Wheat. 1, 194, 195:

It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which *does not extend to or affect other states*. (The italics are those of the report.) * * * But in regulating commerce with foreign nations the power of Congress *does not stop* at the *jurisdictional lines* of the several states. It would be a *very useless power* if it could not *pass those lines*. * * * If Congress has the power to regulate it, that power must be exercised *wherever the subject exists*. If it exists within the states, if a foreign voyage may commence or terminate at a port within a state, then the power of Congress may be exercised within a state. *This principle is, if possible, still more clear when applied to commerce "among the several states."* * * * The power of Congress, then, whatever it may be, must be exercised *within the territorial jurisdiction* of the several states.

After quoting other decisions, the report continues:

There has been some dispute as to the extent to which the states may go in imposing regulations upon the instrumentalities of commerce which may *indirectly* affect interstate commerce until Congress sees fit to prescribe a uniform plan of regulation.

Then is cited with approval language from the decision in *Hall* v. *DeCuir*, 95 U. S., 485, which involved an act of the state of Louisiana prohibiting discrimination by common carriers of passengers between persons of different race or color.

The act was declared to be an interference with interstate commerce, even if construed to be limited to that part of the carriage within the state. Upon this point the court said: "While it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the state, or taken up to be carried without, can not but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. * * * It was to meet just such a case that the commercial clause in the constitution was adopted.

Again the report quotes from *Brown* v. *Houston*, 114 U. S., 622.

In short, it may be laid down as the *settled doctrine* of this court *at this day* that a state can no more regulate or impede commerce among the several states than it can regulate or impede commerce with foreign nations.

The committee comes to certain conclusions which it says have been conclusively established from the decisions to which reference has been made. Among these conclusions is this:

Commerce among the states includes the transportation of persons and property from a place in one state to a place in another state. *Interstate commerce is all commerce that concerns more states than one*, and embraces all transportation which begins in one state and ends in or passes through another state.

In presenting the act to regulate commerce to the Senate the Cullom Committee said:

The provisions of the bill are based upon the theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations, both by declaring them unlawful and adding to the remedies now available for securing redress and enforcing punishment, and also by requiring the greatest practicable degree of publicity as to the rates, financial operations, and methods of management of the carriers.

In view of this internal evidence that Congress was not only officially aware, but that its attention had been directly called to those decisions of the Supreme Court touching upon the boundary line between federal and state control, it certainly may not be truthfully said that Congress intended that its own act should be set at naught by an interstate carrier upon the ground that the discrimination effected against interstate commerce arose out of the rates and practices in effect on commerce wholly within a state.

An interstate carrier must respect the federal law, and if it is also subjected to state law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a state commission, as against which they were helpless. They appealed to no court for relief, nor to this Commission. When the state of Louisiana after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—a traffic adjustment equalizing gateways—and even in this defense all the carriers do not join. The class rates of the Texas commission within the distances here involved are not too low. This the carriers themselves do not urge. Yet they have maintained higher rates from Shreveport, the interstate point. While the Texas commission has

evidenced a policy of home protection for its own state cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the state authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under state direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the federal law which guards commerce "among the states" against discrimination.

It is suggested that the exercise of such power to end discrimination between rates within a state and rates to interstate points must surely lead to a conflict in which the jurisdiction of one sovereignty or the other must give way. To this suggestion the one and sufficient answer is that when conditions arise which in the fulfillment of its obligation and the due exercise of its granted power to regulate commerce among the states make such course necessary the national government must assume its constitutional right to lead.

CONCLUSIONS.

We find:

(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

On the Texas & Pacific Railway.

From Shreveport, La., to—	Dis-	Class rates in cents per 100 pounds.
[illegible]	[illegible]	[illegible]

On the Houston, East & West Texas Railway.

(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under western classification.

(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

(7) That the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale of rates prescribed above shall not be exceeded.

As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers.

PROUTY, *Chairman*, concurring:

I entirely agree with the conclusion reached in the majority opinion and can add nothing to the argument as there stated. I do, however, wish to refer to one or two of the previous decisions of this Commission as illustrative of my views on this general subject.

This question came before the Commission in much its present form in *Reliance Textile & Dye Works* v. *S. Ry. Co.*, 13 I. C. C., 48. In that proceeding the complainant contended that rates from the mills to its dye works, combined with rates from its dye works to points of consumption, were unduly high as compared with similar rates made to and from the dye works of its competitors. One of the rates complained of was that from certain mills in South Carolina to Augusta. Since this was a state rate and under the jurisdiction of the state commission, the defendants insisted that this Commission could not predicate discrimination on a comparison between this rate and the interstate rate to the factory of the complainant. To this contention the Commission refused to assent, saying:

> To this we can not agree. The same lines participate in all these rates from the mill to the dye works of the complainant and its competitor and from these in turn to the points of consumption. When a discrimination, forbidden by the act to regulate commerce, arises from an adjustment of state and interstate rates, carriers subject to our jurisdiction and participating in the interstate rates can not escape responsibility by claiming that the discrimination is accomplished through a reduction of the state rate so long as that reduction is voluntary. They were answerable for the effect produced by the combination of rates, all of which they control.
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> This must certainly be so where the state rate is voluntarily made, and we think that the same conclusion must finally be reached where the state rate is made by state authority. A state can no more improperly prefer an industry within its borders as against an industry located without by the imposition of an improper freight rate than the Southern Railway can unduly prefer that industry in its own interest.

In that proceeding the Commission failed to find the fact of disimination, and no order was therefore required.

In *Saunders* v. *Southern Express Co.*, 18 I. C. C., 415, fish rates from Mobile as compared with those from Pensacola to certain points in the state of Alabama were before us. The Southern Express Company had originally established voluntary rates, thereby creating a relation in transportation charge between the Mobile and Pensacola fish markets to interior points of consumption. The railroad commission of Alabama had established a mileage scale of express charges for the transportation of fish and some other commodities, and the application of this scale had the effect to reduce rates materially from Mobile, whereupon Pensacola complained of the discrimination.

There was no claim of any intent to prefer Mobile to Pensacola; the rates in question were those of the Alabama commission applicable over all lines. To hold that those rates were unduly low would be of necessity to hold that the Alabama schedule as a whole was unduly low, and there was no evidence upon which we could properly do that. Upon the other hand, it did not seem clear that the rates from Pensacola were unduly high, or certainly that rates as low as those prescribed by the Alabama commission, if applied from Pensacola, might not be unduly low.

If we made an order requiring the defendant to remove the discrimination this must apparently result in a reduction in the Pensacola rates, and I did not feel that upon the then state of the record we were justified in requiring that reduction. It was said that the reasonableness of the rates was being contested before the Alabama commission and the course actually adopted by us was to retain the complaint upon our docket where it might be made the subject of further investigation.

The Commission might in that case have found that the circumstances of the transportation from Pensacola were the same as from Mobile and might upon that finding have ordered the carriers to remove the discrimination by putting into effect the same rates from these two points, but to comply with this order the carrier must either have reduced its Pensacola rate or have assumed the burden of showing that the Mobile rate established by the Alabama commission was unduly low. It did not seem to me just to cast this onus upon the carrier until we had gone far enough in our investigation to be willing to say ourselves how the discrimination should be corrected.

I call attention to this case because I am still of that same opinion. While this Commission can not establish and should not attempt to establish, directly or indirectly, a state rate, it must in the exercise of the duty put upon it by the act to regulate commerce determine whether the discrimination exists, and in doing that it may and should examine the state rate in comparison with the interstate rate.

In *Andy's Ridge Coal Co.* v. *S. Ry. Co.*, 18 I. C. C., 405, the question was presented from a somewhat different angle. The complainant was a shipper of coal from the Coal Creek field in Tennessee to Nashville, Tenn., and its complaint was that the rate made by the defendant from its mine to Nashville was too high in comparison with the rate made by the same defendant from certain points in Virginia to Nashville. In preparing the report it was my own first impression that the Commission should order the defendants to desist from this discrimination, and the facts were stated in that view, but upon consideration the Commission was unanimously of the opinion that in that case we had no jurisdiction, for the reason that the rate used by the complainant was a state rate, and that the burden, therefore, was not upon interstate but rather upon state commerce.

Upon further reflection I think that this case was wrongly decided and should be overruled. The state rate is one blade and the interstate the other of these shears, and it is impossible to say which one does the cutting. In my opinion whenever an interstate carrier creates a discrimination by the maintenance of an interstate as compared with a state rate the application for relief must, of necessity, be directed to this Commission, whether the applicant desires to use the state or the interstate service.

The first section of our act provides that it shall not "apply to the transportation of passengers or property wholly within one state," and it is said that we are thereby debarred from dealing with this situation since, as can not be denied, we affect the state rate. But our order is not directed against the state rate and does not of necessity "apply" to it, because it indirectly controls that rate. If this be not so then the converse must all the more be true and no state commission can establish a rate which directly or indirectly affects an interstate rate, which is not in my opinion the law.

It is well settled that there is a broad field within which the state may act in the regulation of its transportation facilities until the federal government has exercised its authority under the commerce clause. A state can not apply its rate of transportation to that portion of an interstate movement which takes place within the territorial limits of a state, because the entire movement has been placed under the jurisdiction of the federal government and that jurisdiction is exclusive; but the state may, I think, establish the rate of transportation from point to point within its limits, although the effect of this is to indirectly require a change in interstate rates upon which Congress has not acted. When the federal authority does act, then the state can not by its action interfere, for in case of actual conflict the state must yield, but the mere enactment of the act to

regulate commerce is not a federal declaration that the interstate rates voluntarily established by carriers which have not been passed upon by the Interstate Commerce Commission are reasonable.

Our third section declares that no carrier subject to the act shall be guilty of undue preference and lays upon this Commission the duty of removing such preference when found to exist. It is no valid reason against the exercise of that authority that as a result some state rate must be changed.

Such an authority must manifestly be exercised by some one, nor is its exercise antagonistic to the interest of state shippers. It is significant that the complainant in the *Andy's Ridge case* was petitioning the Commission to secure him the enjoyment of a state rate, which could only be done by federal authority.

CLARK, *Commissioner*, concurring:

In indicating my assent to the conclusions reached in this case I shall not undertake to discuss the important and far-reaching questions of law that are involved and upon which, as is evidenced by the several attitudes of my colleagues, wide differences of opinion are entertained.

Under the constitution a state may not levy any tax or impost upon commerce from another state. A transportation rate that has been prescribed by, or that is subject to regulation by, a body created by law for that purpose is in essence a tax or impost upon traffic. Here we have one state demanding that the tax upon its traffic shall not be assessed in such manner as to unjustly discriminate against its citizens by or as a result of action of another state, and an adjoining state insisting upon levying the taxes upon commerce in such manner and measure as to give a monopoly of the traffic here considered to the dealers and commercial centers of that state. It may be suggested that this action is not interference with, and does not impede the free flow of, commerce between the states; that it is simply inviting it to move through one channel or gateway instead of another. These rates, however, do not apply to through movement of the traffic from the points at which it is produced or manufactured to final points of consumption, but apply to the redistribution of such traffic after it has been laid down at distributing centers. A state may not obstruct a navigable waterway without the consent of the federal government, and it is no answer to say that it has opened another stream or channel in lieu of the one so obstructed.

Whether or not the Congress has exercised its jurisdiction in these premises and whether or not it has delegated to us power to remove such discriminations and preferences are questions which apparently can never be settled until they have been passed upon by the court

that is empowered to speak the last word. In this question as between two states possessing equal rights under the constitution and equal rights to federal protection, discrimination that is unjust or preference that is undue should, I think, be abated by federal authority, and so long as there is doubt it should be resolved in favor of that course which is harmonious with the fundamental and recognized purpose of the act to regulate commerce.

CLEMENTS, *Commissioner*, dissenting:

The act to regulate commerce at once confers and specifically limits the powers of the Commission intended by Congress to be exercised by it for the correction of wrongs against which the act was aimed.

The question of authority here presented is not that of the Congress, under the constitution, but that of this Commission, under the statute; it is not what additional powers Congress could or ought to vest in the Commission, but, Has it conferred the power here sought to be exercised?

It is conceded that the effect of the order entered in this case is to control the rates on traffic moving from Dallas, Tex., to points of destination in that state. If the power here asserted exists in this Commission then every state rate can be controlled by it. All that is needed to effect this control is for the Commission, either upon complaint made or in a proceeding instituted by it, to fix the maximum rates from a point outside the state for interstate transportation to a point in the given state on the line of an interstate carrier subject to the act, and then fix what it may determine to be the just relation of rates between that particular point of destination and all other points on the same line.

Section 1 of the act contains the following provision:

> That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory * * *.

Every other section of the act must be read and considered in the light of this limitation, and regard must be had to the substantial effect of our orders and to the recognized rule of law that what is forbidden to be done directly may not be effected indirectly.

The manifest theory of the statute is that there is a distinct field for separate and independent state regulation, and another for federal regulation of transportation rates. It is for this Commission to exercise only the authority conferred upon it, and when a condition arises presenting wrongs which can not be corrected without additional authority, to submit the situation to Congress, as provided in the act, for consideration of additional legislation which may com-

mend itself to them. Section 3 of the act, condemning discrimination between places as well as persons and different descriptions of traffic, can not be read independently of this restrictive proviso of section 1.

The principles involved in the line of demarcation between state and federal control of commerce, especially with respect to transportation, are of profound importance, and however comprehensive may be the authority of Congress, this Commission is not justified, in my judgment, in undertaking, by interpretation, to read out of the act an important provision, in order to meet a situation which has developed and which, as I view it, can only be reached by additional legislation.

In so far as the administration of complete justice may be defeated by independent state action, it might be the view of Congress that such result had better be borne than to adopt legislation which practically extinguishes state authority, not only in respect to rates for intrastate transportation, but to many other matters involved in the regulations and practices of carriers wherein questions of discrimination may arise.

It will be noted that the judicial utterances quoted by the majority in this case are not confined to the granting of authority by Congress to the Commission, but relate largely to the broader field of the authority of Congress itself, under the constitution.

The conclusion and order of the Commission in this case mark a new departure, in the interpretation of the statute as to the scope of its authority, from its steadfast attitude toward this fundamental question in all previous cases.

HARLAN, *Commissioner*, dissenting:

While the majority report ascribes to the Texas commission the definite policy and purpose of so adjusting the state rates out of Dallas as to make it the jobbing point for eastern Texas, to the prejudice of Shreveport, the principle underlying the ruling would also control when a state commission, without any such motive but in the normal exercise of its functions, has fixed a scale of rates for purely state traffic with an unfavorable effect on some community in an adjoining state, served by the same carrier to the same destinations. The result of the ruling when analyzed, therefore, seems to be that in fixing a rate on the interstate traffic of a carrier we thereby impose on it and upon the lawfully constituted state authorities a standard to which both must adjust their views as to what is a reasonable rate on its purely state traffic. No room is left to the state commission for the exercise of its discretion when fixing a carrier's state rates to destinations to which its interstate rates also run; the only duty it may perform is carefully to ascertain and follow

the measure of reasonableness fixed by this Commission for the carrier's interstate rates to those destinations.

Harmony in a carrier's charges is always desirable, and it is doubtless true that complications occasionally arise out of the differences in the rates respectively established by the state and interstate commissions on state and interstate traffic. In some way such situations should be regulated. But the exercise by this Commission of a power that so modifies the control of state commissions over state rates and requires a carrier either to put itself in an attitude of disobedience to an order of a state commission respecting its state traffic or to accept less than a reasonable compensation on its interstate traffic, manifestly ought to rest upon some clear and definite declaration of that policy by the Congress. It rests on an insecure and wholly unsatisfactory foundation for administrative purposes when it flows from a process of reasoning that is admittedly mere construction. This is particularly true when it is announced by a quasi-judicial tribunal that has no general jurisdiction but only such special and limited powers as are defined in the act creating it.

The significance of the ruling is emphasized by the fact that it reverses what has been the settled interpretation of the act by this Commission from its inception. In numerous reported cases we have disclaimed the power now asserted and have expressly construed the proviso of section 1 as excluding the right to control such a situation as is here presented. The Congress must be presumed to have known of these decisions and to have accepted that view as the national policy declared by the statute, for in repeatedly amending the act in other respects it has made no change in that regard.

I concur in general in the views expressed in the dissenting reports of MR. COMMISSIONER CLEMENTS and MR. COMMISSIONER McCHORD. It is therefore unnecessary to enter upon any extended discussion of my own, particularly in view of the fact that as the author of the report of the Commission in *Saunders* v. *Southern Express Co.*, 18 I. C. C., 415, which presented the precise question in an even more direct form, I had occasion carefully to consider the extent of our powers in such a situation and to express my views at some length. State traffic as a thing in itself to be regulated under the authority of law has been reserved under the constitution to the several states. The power of the federal government to fix maximum rates on state traffic, even when conducted by an interstate carrier, is therefore a matter of no small doubt. Its power to fix minimum rates on state traffic conducted by an interstate carrier, on the general theory that such traffic ought to contribute ratably to the cost of operating a vehicle of interstate commerce in order not to become a burden on such commerce, seems to me to be more clear. On the same general theory I think that the Congress in aid, or rather in protection, of

interstate commerce may forbid discriminations by a railroad or other instrument of interstate traffic in favor of state traffic. This however it has not yet undertaken to do. In my judgment the language of the proviso of section 1 admits of no other reasonable construction than that the Congress intended expressly to withhold from this Commission the right, directly or indirectly, to exercise its powers with respect to state commerce or to enforce upon such traffic any of the provisions of the act.

McChord, *Commissioner*, dissenting:

In dissenting from the opinion of the majority, it is not my purpose to discuss the relative powers of the state and national governments, for that would presuppose a conflict between federal and state authority, which conflict I do not concede here exists. Neither is it my purpose to argue the extent of the powers of the Congress under the constitution, but rather to confine myself to the powers which the Congress has delegated to this Commission.

The report says complainants have asked this Commission to "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances." It continues: "With this petition we can not comply unless such power has been granted under the first, third, and fifteenth sections of the act to regulate commerce." The first section provides that the rates charged by carriers for interstate transportation must be reasonable, and prohibits and declares to be unlawful all charges which are unreasonable. The third section prohibits the giving of undue or unreasonable preference or advantage to any person, locality, or particular description of traffic, or the subjection of any person, locality, or particular description of traffic to undue or unreasonable prejudice or disadvantage. Section 15 authorizes the Commission to determine and prescribe just and reasonable rates when, after full hearing upon complaint, it shall be of opinion that the existing rates are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial. Under the majority opinion, therefore, resort must be had to all of the enumerated powers in order to grant the relief prayed for.

The report finds that the rates out of Shreveport, La., into eastern Texas discriminate against Shreveport in favor of Texas jobbers. Without now discussing whether or not an interstate carrier may unduly favor its intrastate traffic, let us consider the situation without regard to the state line. Conceding, for the purpose of argument, that the rates from Dallas to eastern Texas discriminate in favor of Dallas as compared with the rates from Shreveport into eastern Texas, the first question that arises is: Is the discrimina-

tion voluntary? In all the reports of this Commission dealing with the question of discrimination we have invariably inquired into the reason for the discrimination, to determine whether or not the same was undue, and where we have found the situation to be one over which the carrier defendant has no control we have held that the carrier was not responsible for the discrimination. Section 4 of the act does nothing more than define a particular form of discrimination, and, from the operation of this, carriers have been relieved when the discrimination, i. e., the lower rate to the farther distant point, was brought about by circumstances beyond its control. In some instances these circumstances were water competition; in others market competition, while again, it was carrier competition. The principle underlying our action in all such cases is that the carrier is not responsible for a discrimination occurring because of circumstances over which it has no control. As was said by Mr. Chief Justice White in *East Tenn., Va. & Ga. Ry. Co.* v. *I. C. C.*, 181 U. S., 1:

The prohibition of section 3, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the *voluntary* and *wrongful* act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of the carriers.

In the instances where we have found the lower rate to the farther distant point or the lower rate to the preferred point to have been reasonable, and therefore have used it to measure the reasonableness of the rate to the point not favored, we have frequently found the latter rate unreasonable and ordered its reduction, but this action was based on section 1 after the complaint under section 3 or 4 had been dismissed. In the present case the rates from Dallas to eastern Texas points are prescribed by the body lawfully constituted and duly empowered so to do—the railroad commission of Texas. If the application of these rates results in a preference to Dallas as compared with Shreveport, then the fact that the intrastate rates were established, not by the voluntary action of the carriers, but under circumstances by which they were controlled, we must find that the discrimination, so far as the carrier is concerned, is not undue. In considering a somewhat similar situation, where the Alabama railroad commission had established rates within the state of Alabama which resulted in alleged discrimination against Pensacola, Fla., the Commission in *Saunders & Co.* v. *Southern Express Co.*, 18 I. C. C., 421, said:

The relation of rates thus produced was neither volun'ary nor the consequence of any uncontrolled action on its part; the continuation of the relation thus created is not in any sense attributable to the defendant unless it may be said that the defendant is under an obligation to correct the discrimination by voluntarily reducing its Pensacola rates to the basis of the Mobile rates.

This the Commission refused to do, chiefly because it considered that the application of the Alabama rates from Pensacola would not be reasonable to the defendant. By this very action the Commission dismissed the case under section 3 and proceeded to consider it under section 1.

In my opinion, therefore, the charging of lower rates to a common territory for intrastate than for interstate traffic, at least where the intrastate rates are compelled, does not constitute undue discrimination. But suppose it did. Has this Commission power to correct it?

Section 3 declares it to be unlawful for any common carrier subject to the provisions of the act to unduly prefer any person, locality, or description of traffic, or to subject any person, locality, or description of traffic to undue or unreasonable prejudice or disadvantage. It is specifically provided in section 1, however, "that the provisions of this act shall not apply to the transportation of passengers or property or to the receiving, delivery, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid." To my mind, this excludes the application of section 3 where either the traffic favored or prejudiced lies wholly within one state. Based upon judicial expressions, intrastate commerce is said by the majority to be that commerce which not only is confined to a single state, but also "does not affect other states." The word "affect" renders the application of this phrase extremely uncertain. I do not hesitate to subscribe to the theory that where intrastate commerce or anything else places a direct burden and obstruction upon interstate commerce the obstruction can be removed. The power to regulate interstate commerce is by our constitution vested in the Congress. That body, under the commerce clause of the constitution, possesses numerous powers, only a few of which it has delegated to this Commission. In deputizing this Commission to correct unreasonable and discriminatory transportation charges and practices for the interstate transportation of passengers and property as defined by the act, Congress specifically excluded from our jurisdiction that transportation which lay wholly within one state. The phrase "wholly within one state" is qualified only by "and not shipped to or from a foreign country from or to any state or territory as aforesaid." Had it been the intention of Congress to make the provisions of the interstate-commerce act applicable to transportation wholly within one state which "affects other states," it doubtless would have further qualified the proviso in section 1. The majority report tells us that Congress was fully aware of the fine distinction between interstate and intrastate commerce as laid down by the courts. It is, therefore, but fair to assume that that body knew the significance of the phrase "does not

affect other states." Whether or not the Congress was so advised is immaterial in the face of the specific exemption of all transportation wholly within one state. The Congress, and not this Commission, is vested with unqualified power "to regulate commerce with foreign nations and among the several states and with the Indian tribes." Some, but not all, of these powers have been delegated by the Congress to this Commission. If it be true that intrastate transportation of the kind here involved "affects" interstate commerce and is subject to the regulating power of the Congress, it is for that body, and not this, to do the legislating. Certainly, as the law now stands, this Commission can not grant relief under the third section, and the fact that the situation, so far as discrimination is concerned, is without remedy does not give to us power which has specifically been withheld. As we look to the act of Congress rather than to the constitution for our powers and duties, it is useless to discuss the constitutional power of Congress under the commerce clause. In my opinion, the majority report is in effect legislation which the Congress has expressly refused to enact.

But suppose that into the proviso of section one we read the phrase "which does not affect other states," and suppose further we concede that the Texas rates "affect" other states. A point may be affected either favorably or unfavorably. Where Shreveport is prejudiced and Dallas favored, it is the opinion of the majority that this Commission can order the discrimination removed. The converse, then, must be true, and upon complaint to this Commission that the rates between Texas points discriminate against Dallas as compared with Shreveport, a like order must be issued.

It is stated "to say that interstate carriers may so discriminate because of the orders of the state commission is to admit that the state may limit and prescribe the flow of commerce between the states." Suppose the discrimination were due to an order of this Commission fixing the Shreveport rate: To say that interstate carriers might discriminate because of such order would be an equal admission that this Commission might limit and prescribe the flow of commerce between points in a state. In response to the suggestion that the federal commerce power extended to all the affairs of a railroad if any part of its business was interstate, Mr. Chief Justice White, in *Howard* v. *I. C. R. Co.*, 207 U. S., 463, said:

It assumes that because one engages in interstate commerce, he thereby endows Congress with power not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely state concern. * * * It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local; would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable matters, which from the beginning have been and must continue to be under their control as long as the Constitution endures.

It has been repeatedly held by the Supreme Court that the power of the state over intrastate commerce is as full and complete as is the power of Congress over interstate commerce. In *Sands* v. *Manistee River Improvement Co.*, 123 U. S., 288, the court, by Mr. Justice Field, said:

> Internal commerce of a state—that is, the commerce which is wholly confined within its limits—is as much under its control as foreign or interstate commerce is under the control of the general government.

The majority points out the chaotic conditions that will result if its view be not accepted. It avers that it will then be within the power of the carriers or of the states to make rates within a state which will so confine the commerce of its communities as to exclude on equal terms other communities. The adoption of the constitution was an expression of the people's aim toward coordination rather than conflict between the sovereignties in the discharge of their respective powers. If, as suggested, our dual plan of government has led to chaos rather than harmony in the regulation of commerce, surely the corrective power has not been lodged with this Commission; and if not vested in the Congress, the final remedy is to be found, as said in *Taylor* v. *Beckham*, 178 U. S., 580, "in the august tribunal of the people which is continually sitting." But I apprehend that such a remedy will not be invoked until it has been more clearly demonstrated than has been done by the majority report that such conflict is real and not the result of misconception both of law and of fact. The Congress is able completely to regulate interstate transportation without the exercise of any control over transportation which lies wholly within a state; so, also, is this Commission, by the proper exercise of the powers which have been conferred. If the alleged preferential intrastate rates are reasonable, and if the transportation conditions from the interstate point to the common territory are similar, it follows that the interstate rates must be too high and should be reduced. But this is not because of discrimination; rather because of inherent unreasonableness. In the determination of the reasonableness of interstate rates comparisons with other rates between points in the same territory or between points in another territory where transportation conditions are similar are extremely helpful, often persuasive, and on account of the high cost, claimed by the carriers and admitted by shippers, for conducting intrastate or local business, the reasonable intrastate rate under similar transportation conditions may safely be accepted for comparative purposes. If an unreasonably low intrastate rate be prescribed by a state commission, the order would not have to be obeyed. The situation may then resolve itself into a question of whether the intrastate rate is reasonable and whether the transportation conditions as to the intrastate and interstate traffic are similar.

Much of the opinion is devoted to a discussion of the supremacy of federal over state control. To my mind, a conclusion both erroneous and unnecessary is reached, and as it is unnecessary I would not further refer to it except for the great length with which the matter has been dealt and my unwillingness to subscribe to the views therein announced. The quotation from the *Pullman case*, 216 U. S., 65, is unassailable, but it should be remembered that in that case the state of Kansas attempted to impose a tax upon all of the property, both interstate and intrastate, of the Pullman Company. The excerpt from *Oklahoma* v. *Kansas Natural Gas Co.*, 221 U. S., 261, is quoted from *Haskell* v. *Cowham*, 187 Fed., 409, and was directed at the action of the state of Oklahoma in refusing to allow natural gas mined therein to be transported by pipe lines out of the state, a situation in no wise analogous to that here presented. The decision in the *Safety Appliance case*, 220 U. S., 27, has absolutely no application to the instant case. There it was in effect held that cars and locomotives are instrumentalities and vehicles of commerce moving over an interstate highway and that their proper and safe equipment was necessary to insure the transportation of interstate commerce.

The case of *Gibbons* v. *Ogden*, 9 Wheat., 1, dealt with the power of the state of New York to grant an exclusive charter to Fulton and Livingston to operate steamboats on its rivers. The principal contention in that case was that commerce on its rivers was subject to state control. The Supreme Court held otherwise, but said nothing that has a direct bearing upon the extension of federal control to intrastate rates in instances of the kind here involved.

The several quotations from the report of the Cullom committee are misleading if some notice be not taken of the situation existing at that time. Prior to the enactment of the law of 1887 Congress had made no attempt to regulate commerce among the states other than that by water. To-day, when we have the benefit of numerous judicial interpretations of the phrase "interstate commerce," it is surprising to note the varied opinions expressed by eminent lawyers before the committee which framed that report a quarter of a century ago. Many contended that transportation from a point in a state to a port of transshipment was subject to state control, while others placed under the jurisdiction of the state traffic carried between points in a state passing out of the state en route, and also contended that the state's control extended over the portion of any interstate transportation which lay within its domain. After discussing this situation the report continues: "It would seem that the only construction applicable under all the circumstances would be that which limits the authority of a state to that commerce which is

wholly domestic or internal and gives to Congress exclusive control over the remainder."

The quotation from *Gibbons* v. *Ogden* would be more enlightening if it included the several preceding sentences, as follows: "The word 'among' means to *intermingle with.* A thing that is among others is intermingled with them. 'Commerce among the states' can not stop at the external boundary line of each state, but may be introduced into the interior." Both the majority opinion and the Cullom report omit the following from *Gibbons* v. *Ogden:*

Comprehensive as the word "among" is, it may very properly be restricted to that commerce which concerns more states than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a state, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended would not have been made had the intention been to extend the power to every description. The enumeration presupposes something not enumerated, and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a state. The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the states generally, but not those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself.

Further on the report quotes Judge Hammond in a case brought in the federal courts of Tennessee to test the validity of a statute enacted in that state for the regulation of railroads:

The decisions amount, we think, only to this: Where a warehouseman or common carrier is engaged in the storage of goods or their carriage within a state, and exclusively within it, the rates of charges for such business are subject to legislative control by the state, and the fact that such legislation may indirectly and remotely affect commerce between the states does not invalidate it, because, if Congress has, by reason of this indirect and remote regulation of such local business to interstate commerce, any right to assert control over what is primarily domestic commerce, it is to be presumed, until Congress acts, that it does not intend to displace the right of the state to control its domestic commerce.

In *Ames* v. *U. P. R. R. Co.*, 64 Fed., 171, Mr. Justice Brewer, sitting in circuit, said:

Neither can I understand how the reduction of local rates, as a matter of law, interferes with interstate rates. It is true that the companies may, for their own convenience, to secure business, or for any other reason, rearrange their interstate rates and make them conform to the local rates prescribed by the state, but surely there is no legal compulsion. The statute of the state does not work a change in interstate rates any more than an act of Congress prescribing interstate rates would legally work a change in local rates.

To the suggestion that the exercise of the power to end discrimination between rates within a state and rates to interstate points must lead to conflict in which the jurisdiction of one sovereignty or the others must give way, the majority answers "that when conditions arise which, in the fulfillment of its obligations and the due exercise of its granted power to regulate commerce among the states make such course necessary, the national government must assume its constitutional right to lead." Let us see whether by the finding of the majority the national government really leads. The rates prescribed as maxima to apply from Shreveport are virtually the Texas commission rates that are in effect in Texas. Subject to these maxima, Shreveport is ordered kept on a parity with Houston and Dallas, leaving it then within the power of the Texas commission to further reduce the Shreveport rates by a reduction in the present Texas scale. The national government therefore *leads* by *following* the judgment of the state government, to whom it in effect says: "We will adopt not only your present scale of rates, but any lower scale you may see fit to establish. Your judgment has been the standard by which we have measured and fixed the maximum rates from Shreveport. If you desire to make lower rates from Shreveport into Texas you may do so by lowering the Texas scale." Of course, if in this instance we fix interstate rates by the Texas yardstick, we must fix other interstate rates by other state yardsticks, and may find ourselves incumbered with some forty-eight different rate meters, which will doubtless create a condition "more absurd and unbearable" than that which the majority opines would arise if the states remain unmolested in the exercise of their legitimate powers. But, aside from this chaos, the Supreme Court has said that the function which the majority would delegate to the state of Texas can not by a state be constitutionally exercised, because:

> The fact which vitiates the provision is that it compels the carrier to regulate, adjust, or fix his interstate rates with some reference at least to his rates within the state. [*L. & N. R. R. Co.* v. *Eubank*, 184 U. S., 41.]

To prevent the conflict between sovereignties which the majority has unnecessarily and by no means conclusively discovered and attempted to remove, the Congress has wisely declared:

> That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid.

The majority endeavors to interpret this provision by explaining what it does not mean, but I submit that if it were not intended to cover instances of the kind with which we are here dealing its incorporation in the act to regulate commerce was wanton and unessary.

My position is that this Commission should confine itself within the four corners of the law of its creation, usurping neither the legislative function of the Congress nor the judicial power of the courts.

APPENDIX.

Exhibit 1.

Class rates Dallas, Tex., to points on the Texas & Pacific Ry.

Class rates Shreveport, La., to points on the Texas & Pacific Ry.

Class rates Houston, Tex., to points on the Houston, East & West Texas Ry.

Class rates Shreveport, La., to points on the Houston East & West Texas Ry.

NOTE 1.—Rates from Dallas and Houston, Tex., to points in Texas on the Texas & Pacific Ry. and Houston East & West Texas Ry. as shown in Texas Lines Basing Tariff No. 2, Wyatt's I. C. C. No. 2.
NOTE 2.—All rates between Texas points and points in Louisiana as shown in Southwestern Lines Tariff 24-T, Leland's I. C. C. No. 871.
NOTE 3.—All mileages used as shown in Texas Lines Mileage Circular No. 6, Wyatt's I. C. C. No. 10, and Texas & Pacific Ry. Local Distance Table Circular 78, I. C. C. No. 1872.

EXHIBIT 2.

Comparison of rates paid by wholesale grocers at Shreveport and by their Texas competitors to common destinations.

From—	To—	Distance.	Sugar.	Flour.	Grain.	Hay.	Canned goods.	Lard compounds.	Green coffee.	Bagging.	Ties.	Bagging and ties; carload.	Extracts.	Cheese.
		Miles.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Nacogdoches	Joaquin	49.6	21.0	21.0	21.0	20.5	21.0	21.0	21.0	21.0	21.0	18.0	27.0	25.0
Shreveport	do	42.8	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	40.0	28.0
Nacogdoches	Tenaha	38.1	17.0	17.0	17.0	17.0	17.0	17.0	17.0	17.0	17.0	15.0	23.0	21.0
Shreveport	do	54.3	31.0	31.0	31.0	34.0	31.0	31.0	31.0	34.0	31.0	24.5	51.0	42.0
Nacogdoches	Timpson	25.8	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	11.0	19.0	17.0
Shreveport	do	63.9	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	52.0	43.0
Nacogdoches	Center	49.7	26.0	26.0	26.0	26.0	26.0	26.0	26.0	26.0	26.0	18.0	35.0	32.0
Longview	do	67.8	26.0	25.5	23.5	21.5	26.0	26.0	26.0	26.0	26.0	18.0	33.0	30.0
Shreveport	do	65.6	35.0	35.0	35.0	40.0	35.0	35.0	35.0	40.0	35.0	24.5	60.0	49.0
Longview	Backville	26.2	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	11.0	19.0	17.0
Shreveport	do	84.6	35.0	35.0	35.0	40.0	35.0	35.0	35.0	40.0	35.0	24.5	60.0	49.0
Marshall	Elysian Fields	17.5	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	8.0	16.0	14.0
Shreveport	do	57.3	71.0	71.0	71.0	74.0	71.0	71.0	71.0	74.0	71.0	24.5	105.0	92.0
Texarkana	Marshall	66.7	26.0	25.5	23.5	21.5	26.0	26.0	26.0	26.0	26.0	18.0	33.0	30.0
Shreveport	do	42.0	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	56.0	42.0
Texarkana	Jefferson	51.2	22.0	22.0	22.0	21.0	22.0	22.0	22.0	22.0	22.0	18.0	28.0	26.0
Marshall	do	15.7	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	8.0	16.0	14.0
Shreveport	do	47.7	30.0	30.0	30.0	35.0	30.0	30.0	30.0	35.0	30.0	24.5	56.0	42.0
Longview	San Augustine	87.2	37.0	32.5	29.5	27.0	37.0	37.0	37.0	37.0	37.0	18.0	48.0	44.0
Nacogdoches	do	69.1	32.0	32.0	32.0	30.0	32.0	32.0	32.0	32.0	32.0	18.0	42.0	38.0
Beaumont	do	120.5	38.0	29.0	26.5	25.5	41.0	41.0	41.0	41.0	41.0	18.0	51.0	47.0
Shreveport	do	85.0	39.0	39.0	39.0	43.0	39.0	39.0	39.0	43.0	39.0	24.5	61.0	52.0
Pittsburg	Avinger	30.9	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	10.4	21.0	19.0
Shreveport	do	66.1	42.0	42.0	42.0	44.0	42.0	42.0	42.0	44.0	42.0	24.5	64.0	51.0
Texarkana	Atlanta	23.8	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	10.0	18.0	16.0
Shreveport	do	60.8	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	56.0	42.0
Marshall	Waskom	19.1	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	9.0	17.0	15.0
Shreveport	do	20.5	23.0	23.0	23.0	23.0	23.0	23.0	23.0	9.0	9.0	9.0	39.0	27.0

EXHIBIT 3.

Comparison of rates paid by wholesale saddlery and vehicle dealers at Shreveport and by their Texas competitors at common destinations.

From—	To—	Distance.	Wagons.	Buggies.	Saddles.	Harness.	Horse collars.	Leather.
		Miles.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Dallas..........	Jonesville.....	163.7	39.2	48.8	61.0	61.0	61.0	56.0
Shreveport.....	.....do........	26.0	40.0	60.0	40.0	40.0	40.0	28.0
Dallas..........	Marshall......	147.7	36.8	45.6	57.0	57.0	57.0	53.0
Shreveport.....	.....do........	42.0	56.0	84.0	56.0	56.0	56.0	42.0
Dallas..........	Elysian Fields	165.2	54.0	56.0	70.0	70.0	70.0	64.0
Shreveport.....	.....do........	57.3	105.0	157.5	105.0	105.0	105.0	82.0
Dallas..........	Tenaha.......	180.2	58.0	59.2	74.0	74.0	74.0	68.0
Shreveport.....	.....do........	54.3	51.0	76.5	51.0	51.0	51.0	42.0
Dallas..........	Joaquin.......	192.0	58.0	60.8	76.0	76.0	76.0	70.0
Shreveport.....	.....do........	42.8	40.0	60.0	40.0	40.0	40.0	40.0

Comparison of rates paid by furniture and stationery dealers at Shreveport and by their Texas competitors at common destinations.

From—	To—	Distance.	Stationery.	Document files, k. d.	Sales books, cash slips.	Talking machines, records.	Iron parts, office chairs.	Furniture, new, c. l.
		Miles.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Dallas..........	Nacogdoches..	168.1	71.0	65.0	58.0	71.0	55.0	41.0
Galveston......	.....do........	186.0	62.0	57.0	51.0	62.0	47.0	36.0
Shreveport.....	.....do........	92.4	66.0	57.0	48.0	66.0	43.0	41.0
Dallas..........	Tyler..........	103.4	53.0	49.0	36.0	53.0	41.0	25.6
Galveston......	.....do........	262.8	81.0	74.0	64.0	81.0	60.0	45.0
Shreveport.....	.....do........	107.6	91.0	78.0	66.0	91.0	59.0	57.0
Dallas..........	San Augustine	211.9	80.0	72.0	60.0	80.0	58.0	48.0
Galveston......	.....do........	194.0	86.0	78.0	65.0	86.0	61.0	44.0
Shreveport.....	.....do........	85.0	61.0	52.0	43.0	61.0	39.0	38.0
Dallas..........	Longview......	124.0	51.0	47.0	34.4	51.0	41.0	24.8
Galveston......	.....do........	280.1	84.0	76.0	65.0	84.0	61.0	47.0
Shreveport.....	.....do........	65.7	60.0	49.0	40.0	60.0	35.0	35.0
Dallas..........	Pittsburg......	126.0	52.0	48.0	35.2	52.0	42.0	24.8
Galveston......	.....do........	320.9	87.0	78.0	65.0	87.0	61.0	48.0
Shreveport.....	.....do........	97.0	74.0	60.0	53.0	74.0	52.0	46.0
Dallas..........	Clarksville....	130.8	61.0	56.0	40.8	61.0	46.0	28.8
Galveston......	.....do........	392.3	87.0	78.0	65.0	87.0	61.0	48.0
Shreveport.....	.....do........	133.1	105.0	92.0	74.0	105.0	71.0	58.0
Dallas..........	Carthage......	160.6	69.0	63.0	57.0	69.0	54.0	48.0
Galveston......	.....do........	233.5	82.0	75.0	65.0	82.0	61.0	42.0
Shreveport.....	.....do........	74.9	60.0	49.0	40.0	60.0	35.0	35.0
Dallas..........	Mineola.......	78.2	37.0	34.0	25.6	37.0	30.0	19.2
Galveston......	.....do........	288.4	86.0	77.0	65.0	86.0	61.0	42.0
Shreveport.....	.....do........	111.5	79.0	64.0	58.0	79.0	55.0	48.0

EXHIBIT 4.

GENERAL TARIFF OF CLASS RATES, No. 3.

Effective February 10, 1902, with amendments in effect October 31, 1910.

The rates in this tariff shall be subject to Texas classification No. 1 and amendments or subsequent issue.

SECTION 1.—*Table of rates.*

[Rates, in cents per 100 pounds, to apply on merchandise by classes, transported by railroads between points in Texas, except as otherwise provided in sections 2, 3, and 4 of this tariff.]

SECTION 2.—*Joint rates.*

For the transportation of shipments over two or more railroads which are not under the same management and control, and not otherwise provided for, the rates shall be made by adding to the rates prescribed in table of rates, section 1, of this tariff, the following, viz:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	8	7	6	5	4	4	4	3	2	2

Provided: 1. That when the sum of the rates prescribed for local application is less than a joint rate made in accordance with the above instructions, such sum of rates shall be used as the joint rate.

2. That the joint rates in common-point territory shall not exceed the following figures, viz:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	80	72	60	58	44	46	40	34	23	17

except in cases where greater rates may be made by using the rates provided in exceptions, section 3, of this tariff.

NOTE.—The term "common-point territory" designates that portion of Texas lying south of the Amarillo division of the Chicago, Rock Island & Gulf Railway, but including Amarillo, and east of and including points on a line drawn from Amarillo via Midland (Cir. No. 3572, effective Nov. 1, 1910) on the Texas & Pacific Railway; San Angelo on the Gulf, Colorado & Santa Fe Railway; Brady on the Fort Worth & Rio Grande Railway; Llano on the Houston & Texas Central Railroad; San Antonio on the Galveston, Harrisburg & San Antonio Railway and San Antonio & Aransas Pass Railway; Laredo on the International & Great Northern Railroad, and Alice and Corpus Christi on the San Antonio & Aransas Pass Railway; provided, that no part of the St. Louis, Brownsville & Mexico Railway south of Sinton and the Texas Mexican Railway shall be included in common-point territory. (Cir. No. 2271, effective July 10, 1905.)

Exception 1 to note.—The Wichita Valley Railway west of Sagerton shall be considered in differential territory. See exception 3, section 4, for special differential rates. (Cir. 3194, effective Sept. 15, 1909.)

Exception 2 to note.—The Concho, San Saba & Llano Valley Railroad (canceled by Cir. No. 3368, effective Apr. 1, 1910).

INVESTIGATION AND SUSPENSION DOCKET No. 45.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES FOR THE TRANSPORTATION OF POTATOES AND OTHER ARTICLES.

Submitted January 15, 1912. Decided March 21, 1912.

Proposed minimum weight of 30,000 pounds from St. Louis, Mo., to points east of the Illinois-Indiana state line upon potatoes originating in Louisiana and Texas found to be unreasonable.

J. E. Robinson for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

D. P. Connell for the New York Central lines.

T. J. Norton and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.

F. C. Dillard and *H. A. Scandrett* for Morgan's Louisiana & Texas Railroad & Steamship Company; Louisiana Western Railroad Company; Texas & New Orleans Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; Houston & Texas Central Railroad Company; and Houston, East & West Texas Railway Company.

A. P. Humburg for Illinois Central Railroad Company.

Edward E. Gates and *J. Keavy* for Indianapolis Freight Bureau.

James Stillwell for Cleveland, Akron & Cincinnati Railway Company; Pittsburg, Chartiers & Youghiogheny Railway Company; Cincinnati, Lebanon & Northern Railway Company; and Pennsylvania lines.

REPORT OF THE COMMISSION.

MCCHORD, *Commissioner:*

This proceeding presents for determination the reasonableness of a minimum weight of 30,000 pounds applied from St. Louis to points east of the Illinois-Indiana state line upon potatoes originating in Louisiana and Texas.

Prior to May 8, 1910, charges upon shipments of potatoes from Louisiana and Texas points to the territory in question were assessed upon a minimum of 24,000 pounds to St. Louis and 30,000 pounds beyond. On that date the 24,000-pound minimum was made applicable for the entire haul, and this was the situation until the

issue of Leland's tariff, I. C. C. No. 824, published to become effective May 30, 1911, which tariff proposed to restore the basis theretofore in effect, and therefore to increase from 24,000 pounds to 30,000 pounds the minimum applicable east of St. Louis. On May 27, 1911, the Commission suspended until September 27, 1911, the tariff naming this increased minimum, and entered upon an investigation as to the reasonableness thereof. On August 29, 1911, the aforesaid tariff was further suspended until March 27, 1912. Numerous commission merchants and dealers in potatoes at Chicago and Indianapolis were present and testified at the hearing.

The carriers upon whom rested the burden of proving the reasonableness of the increased minimum presented practically no defense. The initial lines in the south and southwest frankly admitted that because of the delicate nature of the Louisiana and Texas potato, more than 24,000 pounds can not safely be loaded. These lines maintain such a minimum to all points, except to the territory here involved, and even in participating in that traffic their minimum of 24,000 pounds applies up to St. Louis. As it is ordinarily the initial carrier who prescribes the minimum weight, we are inclined to regard this admission as highly persuasive evidence of the unreasonableness of a minimum higher than 24,000 pounds. The higher minimum from St. Louis to points east of the Illinois-Indiana state line when effective was due to, and its restoration is now proposed by, the carriers operating in central freight association territory. It appears that 30,000 pounds is the minimum applicable on potatoes in that territory, as it is also the minimum from the Wisconsin and Michigan districts, except that during the summer it is 24,000 pounds. The reason for the reduction by the central freight association carriers from 30,000 pounds to 24,000 pounds on May 8, 1910, was not clearly explained, but was probably due to their desire to participate in the movement of an unusually large crop. Potatoes are liable to greater damage from heating than from any other cause, and it is for this reason that the Wisconsin and Michigan carriers reduce the minimum during the warm weather. Most of the northern potatoes move during the cool weather, while the Texas and Louisiana crop must be moved during May and June. Furthermore, the character of the potatoes in these sections materially differs. The Wisconsin and Michigan potato is firm, can withstand rough handling, and possesses great keeping qualities. The Texas and Louisiana potato, on the other hand, is extremely perishable, possesses little keeping qualities, and requires the exercise of great care in loading to insure the best possible ventilation and the least possible pressure from the weight of one sack upon or against another. Without describing in detail the method of proper loading and the disastrous effects of

improper loading, it is sufficient to say that it has been fully shown that the Texas and Louisiana potato can not safely be loaded to more than 24,000 or 25,000 pounds.

The central freight association lines responsible for the proposed increased minimum, while represented at the hearing, offered no material testimony in support of their contention. Defendants have not shown that the proposed increased minimum weight is reasonable, and under all the circumstances we are of the opinion and find that the same is unreasonable and that a reasonable minimum to be applied from St. Louis to points east of the Illinois-Indiana state line upon potatoes originating in Louisiana and Texas should not exceed 24,000 pounds. Defendants will be expected to withdraw the tariff now under suspension, which may be done upon one day's notice; otherwise an appropriate order will be issued.

No. 4091.

W. G. COSBY

v.

RICHMOND TRANSFER COMPANY ET AL.

Submitted October 3, 1911. Decided January 15, 1912.

1. If a carrier undertook to make delivery of passenger baggage and to issue baggage checks at residences for the rate of fare stated in its tariffs, this would be a service over which this Commission would have jurisdiction and which must in all regards become subject to the mandates and prohibitions of the act, even though the service in whole or in part was not performed by the carrier itself, but was rendered by some agency under contract or otherwise. But in merely granting the exclusive privilege of soliciting on its trains and issuing baggage checks at residences to one baggage transfer company a carrier does not undertake an additional service to the public. The carrier's duty to the public as to baggage begins and ends in the baggage room provided by it. Baggage transfer is prior or subsequent to the transportation service as to which the carrier owes a duty to the public and is therefore outside the jurisdiction of this Commission.
2. No public duty is owed by a carrier to baggage transfer agents, as such, and therefore the Commission finds that although the exclusive privilege of soliciting baggage transfer on defendants' trains is given to one transfer company which is controlled by officers of defendants, yet there is no undue discrimination, since no one is given any *undue* advantage or is subjected to any *undue* or unreasonable prejudice as to any matter in relation to which the carrier owes a duty.

Wise & Chichester for complainant.

J. Jordan Leake for Richmond Transfer Company.

R. Walton Moore for Southern Railway Company and others.

H. T. Wickham for Chesapeake & Ohio Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner:*

W. G. Cosby is a resident of the city of Richmond, Va., and the owner of a baggage transfer business known as the Cosby Transfer. The Richmond Transfer Company is a corporation founded by a rival of Mr. Cosby's named Garber, together with a group of railroad officials. This company purchased Garber's business, and on June 5, 1893, the defendant railroads granted to the Richmond Transfer Company, without monetary consideration, the exclusive privilege of soliciting business on their trains and in their depots and of issuing baggage checks at the residences of prospective passengers.

It is Mr. Cosby's contention, as a citizen, that the rates charged for the transfer of baggage in the city of Richmond are unreasonable, and that this Commission has jurisdiction to fix the rates charged by the Richmond Transfer Company, because this company is the agent of the railroads in providing "a service in connection with the receipt and delivery of property transported." The foundation for this position he finds in the language of section 1 of the act wherein this Commission is given jurisdiction over the transportation of property, and the term "transportation" is defined as including—

cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, expressed or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

The second position which complainant takes is that under section 3 of the act the Richmond Transfer Company is given an undue and unreasonable preference or advantage over the Cosby Transfer in that the exclusive privilege of soliciting baggage transfer business on the trains and in the depot of defendants and of issuing defendants' baggage checks has been granted to the Richmond Transfer Company without consideration, whereas the complainant herein has offered $500 for such privilege, stipulating in his offer that the rates charged the public would be lower than those at present imposed by the Richmond Transfer Company. "The prayer of the complaint," said counsel for complainant at the hearing, "is that equal opportunity be given to all persons to secure this agency, provided they can satisfy the carriers of their ability to perform it, and the prayer is that the public shall cease being forced to pay the unreasonable rate."

It is not to be understood that the complainant denies the right of the defendant carriers to make an exclusive contract with any transfer agent, recognizing and accepting the principle laid down in *Donovan* v. *Pennsylvania Co.*, 199 U. S., 279, wherein it is said:

When not unnecessary, unreasonable or arbitrary, a railroad may make arrangements with, including the granting of special privileges to, a single concern to supply passengers arriving at its terminals with hacks and cabs, and it is not bound, at least in the absence of valid state legislation requiring it to do so, to accord similar privileges to other persons, even though they be licensed hackmen. Such an exclusive arrangement is not a monopoly in the odious sense of the word, nor does it involve an improper use by a railroad company of its property.

The complainant finds in this same opinion of the late Mr. Justice Harlan support for the theory for which he contends, in these words:

The record does not show that the arrangement referred to was inadequate for the accommodation of passengers. But if inadequate, or if the transfer company was allowed to charge exorbitant prices, it was for passengers to complain of neglect of

duty by the railroad company and for the constituted authorities to take step to compel the company to perform its public functions with due regard to the rights of passengers.

Applying this principle, the complainant urges that however broad the privileges granted a railroad may be, a right remains in the public entitling the citizen to reasonable service on the part of the carrier. "It must be conceded, therefore," urges complainant, "that the true test of the legality of any preference by exclusive contract on the part of a railroad company, having for its object the maintenance of a depot facility is whether or not the preference results in the reasonable service and accommodation of the public."

For the sole purpose of raising the question of jurisdiction defendants have admitted that the charges imposed by the transfer company are unreasonable, and in the discussion of the case herein we will proceed upon the assumption that such a finding would eventually be made upon the facts.

We come immediately to the fundamental question in this case: Has Congress intended to give this Commission jurisdiction over local baggage transfer agencies? In answering this question we turn first to the provisions of the act, and in the second place inquire whether the railroad itself undertakes to give this service of gathering and delivering baggage at residences. To the first question we can find no other answer than that the language of the act, while extremely broad, can not fairly be interpreted to bring such agencies within our jurisdiction; and to the second question we think the answer must be that the railroad does not undertake to provide this service, but rather, for the accommodation of its passengers, permits a transfer agency to use its trains to solicit business, and to check baggage at residences.

We have quoted that part of section 1 defining the transportation over which this Commission has jurisdiction: "All instrumentalities and facilities of shipment or carriage * * * and all services in connection with the receipt, delivery, and handling of property transported." Immediately following these words is found this clause:

> And it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

If the instrumentalities or services referred to in this section include the use of an express wagon for the delivery of personal baggage at the residence of the passenger, it follows that the rate for such service must be incorporated in the tariffs of the carrier. This is a construction which the law has never borne. Nor can we assume at under the last clause of the act above quoted the duty was osed upon a carrier to furnish such transportation by wagon.

Yet if we had jurisdiction it would be our duty wherever reasonable request was made therefor to require the railroad to publish a rate including delivery of baggage at residence and to furnish facilities therefor. A reasonable reading of this section would limit the obligation imposed upon the carrier to such facilities as were necessary to the receipt or delivery of property at those points where the railroad itself undertook to receive or deliver property.

The language of the section is subject to a still narrower interpretation, which would exclude baggage entirely from its purview, for it might be urged with reason that in speaking of instrumentalities and services in this connection the Congress had in mind only those instrumentalities and services incident to the carriage of freight. The transportation of passenger baggage is ancillary to the transportation of the passenger and might well be regarded as not covered by the provisions of section 1. To this view, however, we do not hold. This Commission is given jurisdiction over whatever service the carrier undertakes to render in connection with the delivery of the passenger's baggage as "property transported."

If the carrier undertakes to make delivery of passenger baggage at residences for the rate of fare stated in its tariffs, then it follows that this is a service over which this Commission has jurisdiction and which must in all regards become subject to the mandates and prohibitions of the act, even though the service in whole or in part is not performed by the carrier itself but is rendered by some agency under contract or otherwise. Whatever the interstate carrier undertakes to do for the passenger or shipper becomes a matter of scrutiny, investigation, and regulation by this Commission within the power conferred upon us. If, therefore, the service in question is one which the Southern Railway Company, for instance, undertakes to give at Richmond, the power is lodged in this Commission to condemn the rates charged therefor as unreasonable.

Does it follow, however, from the fact that a railroad company makes this exclusive contract under which the soliciting of baggage on its trains and within its depots is granted to one agent, that this is an assumption by the railroad of a new service or the recognition of an obligation to perform such a service subsequent to the delivery of the baggage at its own depot? If there was a duty imposed by law upon the railroad to provide such service, as has been aforesaid, the interposition of an agent would not withdraw the carrier in providing such service from governmental control. But there is no such duty arising either under statute, common law, or custom. The carrier has performed what is required of it when it accepts baggage at its depot, transports it, and makes delivery at destination upon its own terminal.

And this brings us to what is perhaps the crucial question in this case. Is the Richmond Transfer Company the agent of the passenger or the agent of the railroad company? It is not denied that the passenger who is solicited upon the train may himself take possession of his baggage at the depot and transport it in his own carriage, or by any other conveyance, to his residence. The one advantage which the Richmond Transfer Company enjoys as to incoming baggage is that its agents have the right of access to the passengers upon the trains. This is a valuable privilege, but the presence of this baggage transfer agent upon the train does not make him a representative of the railroad company, and the receipt which he gives for the baggage check that is given to him in no way binds the railroad company. In presenting that check at the baggage office this transfer company acts as the agent of the passenger and not as an employee of the rail carrier. If the charge made or the service rendered is unreasonable it is subject to municipal regulation. If the passenger does not wish to constitute the transfer company his agent he may transfer his check to anyone else, to whom the railroad company must deliver the baggage as promptly as if the check had been given into the hands of the agent on the train.

In permitting the transfer company to enter its trains the railroad is not undertaking to render an additional service, but is providing an additional accommodation for the passenger. The transportation service which the railroad tenders to the public would be performed without the presence of this baggage agent on its train. His presence makes available a convenience for which the carrier makes no charge, and of which the passenger may avail himself or not, as he sees fit, upon the termination of his journey. The payment for local baggage delivery service is distinct from the payment for the interstate journey and these payments arise under two distinct contracts having no relation to each other.

The test as to when our jurisdiction attaches is found in answering the question, "When is delivery made to the shipper or passenger and the service undertaken by the carrier brought to an end?" It may not always be that the mere intervention of a shipper forecloses the claim that the carrier has not given the full service which it undertook to render. For example, in the case of transit privileges, it often happens that the shipper intervenes before the carrier has rendered the full transportation service which it undertook under its tariffs to give. But where a carrier, as in this case, does not undertake to render any service after baggage has gone into the hands of the passenger or his agent, it must be conclusively presumed that the passenger has accepted delivery at the carrier's station, and any service rendered after traffic passes from the hands of the carrier to those of the shipper or his agent is an ancillary service over which

we have no jurisdiction. A carrier's practices regarding delivery are within our regulative control, but where such practices follow delivery to the shipper the Commission is without power.

Concerning the complaint under section 3, the Commission holds that so far as the record discloses there has been no undue or unreasonable preference given by defendant railroads to the Richmond Transfer Company. Assuming that the policy of the transfer company is now controlled by officers of the defendant railroads, we do not believe that this fact gives the Commission jurisdiction. If it should appear that any undue or unreasonable advantage or preference were given to one transfer company over any other transfer company then the Commission would undoubtedly have jurisdiction. But there is no allegation that the complainant had been hindered in any way from delivering or receiving baggage at the station or that the traveling public had in any way been inconvenienced or interfered with at the station in the delivery or removal of baggage for which complainant held checks. Furthermore, it is conceded by complainant that the mere granting of the exclusive privilege is not, *per se*, undue or unreasonable. Since no public duty is owed to the complainant in his capacity as a transfer agent by defendants, and since there is no allegation of any undue or unreasonable preference or advantage given to anyone, or of anyone being subjected to any undue or unreasonable prejudice, we find no violation of section 3 of the act. It is as much beyond our power to order a railroad to give the Cosby Transfer an opportunity to bid against the Richmond Transfer Company for the privilege of soliciting on trains as it is beyond our power to compel a railroad to place its fruit venders' privilege up at auction, for neither one is *transportation* under the act and over neither one have we jurisdiction.

After reviewing all the facts, the Commission finds that there has been no discrimination that is undue and comes within our jurisdiction and that the Commission has no jurisdiction to regulate the alleged unreasonable charges. The complaint, therefore, must be dismissed, and it will be so ordered.

No. 3128

A. PRIESMEYER SHOE COMPANY

v.

CHICAGO & ALTON RAILROAD COMPANY ET AL.

Submitted October 11, 1911. Decided March 11, 1912.

Rates charged on leather and other materials used in the manufacture of boots and shoes from points in the east to Jefferson City, Mo., not found to have been unreasonable.

E. M. Stephen for complainant.

[illegible], Payne, [illegible] & [illegible] and *Blackburn Esterline* for Chicago & Alton Railroad Company; New York, New Haven & Hartford Railroad Company; and New England Navigation Company.

James C. Jeffery for Missouri Pacific Railway Company.

J. L. Howell for Terminal Railroad Association of St. Louis.

James Stillwell for Cumberland Valley Railroad Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; and Vandalia Railroad Company.

James Stillwell and *Henry W. Biklé* for Pennsylvania Railroad Company.

O. E. Butterfield for New York Central Lines.

O. E. Butterfield and *William Ainsworth Parker* for Baltimore & Ohio Railroad Company.

J. W. Allen for Missouri, Kansas & Texas Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of boots and shoes at Jefferson City, Mo. By petition, filed February 23, 1910, it alleges that it was charged unreasonable rates for the trans- ion of certain less-than-carload shipments of leather and other -ials used in the manufacture of boots and shoes, from points Ne England states and in New York, New Jersey, Pennsyl-] a re, Ohio, and Wisconsin, to Jefferson City. Repara- . At the hearing demand for reparation on shipments kee, Wis., was withdrawn.

These shipments moved during the years 1908 and 1909. There were at the time no joint through rates applicable, and freight charges were collected on the basis of the second-class rates to East St. Louis, Ill., plus a rate of 19½ cents from East St. Louis to destination, made by adding a bridge toll of 2 cents to the rate from St. Louis, Mo. The rates from the various points of origin to East St. Louis and St. Louis were the same. From the latter point, however, the rate to Jefferson City was 17½ cents, or 2 cents less than the rate from East St. Louis. Complainant contends that inasmuch as the rates from points of origin to both East St. Louis and St. Louis were the same, charges on these shipments should have been assessed on the St. Louis, instead of the East St. Louis, combination. The record shows that prior to November 20, 1909, the rates from points of origin to St. Louis included delivery only at the depots of the eastern lines in St. Louis and that the rates from St. Louis to Jefferson City applied only from the depots of the western lines in St. Louis. Therefore, had the St. Louis combination been used, it would have involved a drayage transfer from the depots of the eastern lines to the depots of the western lines, which was not provided for in published tariffs, but which, the testimony indicates, would have been 3 cents per 100 pounds, or 1 cent higher than the bridge toll from East St. Louis to St. Louis, which was included in the rate of 19½ cents from East St. Louis. On November 20, 1909, the eastern lines published tariffs providing for the absorption of drayage charges necessary to effect delivery at St. Louis to the depots of the western lines on through shipments to Jefferson City.

The petition sets forth 246 shipments, excluding those originating at Milwaukee. In the statement showing points of origin, dates of shipments, routes, and charges paid, submitted by complainant as basis for reparation and acknowledged by the participating carriers to be correct, the number of shipments has been reduced to 135. Of these 135 shipments, 130 moved prior to November 20, 1909.

The five shipments which moved subsequently to that date are as follows: December 16, 1909, from Noxen, Pa., over the lines of the Lehigh Valley Railroad, Wabash Railroad, and Missouri Pacific Railway, one shipment of cut soles weighing 1,600 pounds, on which charges were collected in the sum of $14.32; on November 30, 1909, December 4, 1909, and December 8, 1909, from Ludlow, Pa., over the lines of the Pennsylvania Railroad, Erie Railroad, Wabash Railroad, and Missouri Pacific Railway, three shipments of leather aggregating 3,675 pounds, on which freight charges were collected in the total sum of $26.65; and on December 11, 1909, from Newberry, Pa., over the lines of the Philadelphia & Reading Railway, Erie Railroad, Wabash Railroad, and Missouri Pacific Railway, one shipment of leather weighing 930 pounds, on which charges were collected in the

sum of $8.13. It follows that the charges collected on these shipments constitute overcharges above the tariff rates to the extent of 2 cents per 100 pounds. The carriers participating in the movement of this traffic, with the exception of the Missouri Pacific Railway, should refund such overcharges without the requirement of an order of the Commission.

No evidence was offered to show that the rates were unreasonable in themselves. Upon consideration of all the facts we are unable to find that the rates charged on the shipments prior to November 20, 1909, were unreasonable. The present rates between the points mentioned are not in issue. Upon receipt of satisfactory evidence that refund of the overcharges above mentioned has been made the complaint will be dismissed.

No. 3770.

CRESCENT COAL & MINING COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY.

Submitted July 5, 1911. Decided March 11, 1912.

Assessment of demurrage charges on coal consigned to and for the use of a common carrier, which accrued on account of that carrier's embargo against connecting line at destination, not found unreasonable or unjustly discriminatory. Complaint dismissed.

M. F. Gallagher for complainant.
Charles D. Clark for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the sale of coal, with its principal office at Chicago, Ill. By petition, filed January 17, 1911, it alleges that the collection by defendant of demurrage charges at Chicago on certain interstate shipments of coal was unreasonable and unjustly discriminatory, and asks reparation. The claim was first filed with the Commission on December 12, 1910.

During the months of December, 1908, and January and February, 1909, numerous carloads of coal were shipped via the line of the Baltimore & Ohio Railroad Company from various points in the state of Pennsylvania to complainant at Chicago. Complainant was under contract to furnish the Chicago & North Western Railway Company with a certain amount of fuel coal, and accordingly, upon arrival of these shipments in Chicago, complainant gave orders to the Baltimore & Ohio to reconsign and deliver them to the Chicago & North Western, that carrier thereby becoming the consignee of the property. The Chicago & North Western was at the time elevating its tracks in Chicago and had placed an embargo against traffic from connections, which delayed the delivery of the cars. Defendant held the cars until the Chicago & North Western was ready to receive them, and during that period demurrage charges accrued, which defendant collected from complainant.

.d the cars within the free time. It
s are materially different.
W. C. Ry. Co., 20 I. C. C., 153, on
ıd stock, occasioned by a flood, com-
nd unload promptly certain inbound
were in position to make deliveries;
he assessment of demurrage charges
In *Hitchman Coal & Coke Co.* v.
C., 512, the Commission held that
mon law for the theory that a carrier
ıother carrier may enjoy or be given
e is no intimation in the act to regu-
shipper has or may be given a status
geous than that given to other ship-
stands like any other shipper, and it
.e unlawful to apply one rule when a shipment is for a rail-
ıd a different rule when for a private individual, if the traffic
ın kind and the circumstances and conditions of transportation
stantially similar.

plainant places some reliance upon the fact that defendant's
rovided that demurrage would be waived when cars were de-
because of "railroad errors, or omissions." But we think it
that no reasonable construction of that provision will admit
application when the only carrier at fault was the consignee
shipments and did not participate in the transportation.

ıave heretofore held that demurrage must be collected by the
either from the vendor or the vendee, but that the Commis-
n not undertake to investigate the facts and determine for
rier whether the vendor or the vendee is liable for the charges,
Ruling 96; and without entering into a consideration of the
n of whether the defendant should have collected from the
o & North Western or from complainant, it is the conclusion of
mmission, upon consideration of the facts of record, that the
ent of the demurrage charges herein complained of was not
nable or unjustly discriminatory. The complaint must there-
dismissed, and it will be so ordered.

. C.

No. 4013.

ALABAMA LUMBER & EXPORT COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted November 4, 1911. Decided March 11, 1912.

The facts of record in this case do not show that defendants misrouted the shipment, or that the rates charged were unreasonable. Complaint dismissed.

No appearance for complainant.

W. A. Northcutt for Louisville & Nashville Railroad Company.

M. P. Callaway for Central of Georgia Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is engaged in the lumber business at Opelika, Ala. By petition, filed April 10, 1911, it alleges that it has been charged an unreasonable rate for the transportation of one carload of lumber from Brewton, Ala., to Atlanta, Ga. Reparation is asked.

On February 8, 1910, The Cedar Creek Mill Company, of Brewton, delivered to the Louisville & Nashville Railroad Company at that point a car of yellow-pine lumber consigned to the complainant at Atlanta, with routing instructions "c/o C. of Ga. Ry." specified in the bill of lading. Brewton is a local point on the Louisville & Nashville, and at the time of shipment this carrier published a joint commodity rate of 9½ cents applicable over the lines of the Western Railway of Alabama and Atlanta & West Point roads. However, the Louisville & Nashville carried the car to Montgomery and there delivered it to the Central of Georgia for transportation to Atlanta. The destination expense bills are not in evidence, but it is alleged that charges in the sum of $86.45 were assessed on the shipment based on a through rate of 13 cents on weight of 66,500 pounds.

The complainant did not appear at the hearing, but from the correspondence in the record and from the allegations of the petition it is clear that the complainant's directions to its agent to ship "care Central of Georgia Railway" were intended to provide merely for

delivery at Atlanta by the latter carrier. In defense of its action the Louisville & Nashville states that it construed the shipping instructions to mean that the Central of Georgia was to have a line haul, and for that reason the car was delivered to the latter carrier at Montgomery instead of being hauled over the route via which the joint rate of 9½ cents applied.

Upon the facts of record we can not find that defendant is chargeable with misrouting nor can we find that the rate assessed was unreasonable. The complaint will be dismissed and an order entered accordingly.

No. 4192.

NATIONAL MANUFACTURING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted December 9, 1911. Decided March 5, 1912.

Complainant's inability satisfactorily to market glucose sirup at Pacific coast points from its factory at St. Joseph, Mo., found to lie in the price it pays for its raw materials and not in the rate from St. Joseph to destinations. Complaint dismissed.

A. R. Furness for complainant.

T. J. Norton and *J. R. Koontz* for Atchison, Topeka & Santa Fe Railway Company.

F. C. Dillard, H. A. Scandrett, and *L. T. Wilcox* for Southern Pacific lines.

F. H. Wood, E. K. Voorhees, and *F. C. Dumbeck* for St. Louis & San Francisco Railway Company.

K. M. Wharry for Missouri Pacific Railway Company.

Report of the Commission.

Harlan, *Commissioner:*

Although the complaint is directed against the carload rates on which its manufactured products reach the markets on the Pacific coast, a careful examination of the record makes it clear that the complainant's trouble does not arise out of those rates, but grows out of the price that it is required to pay for its raw materials.

The better grades of maple sirup, cane sirup, sorghum, and molasses which the complainant produces can not be disposed of to jobbers unless the manufacturer is prepared also to supply them with glucose sirup, a cheaper article that is staple in the trade, and constitutes, as we are told, a substantial percentage of all the sirup used. The complainant therefore manufactures that kind of sirup, and it is in fact its chief product. Glucose sirup consists of nine parts glucose with an admixture of one part of refiner's sirup.

The complainant's factory is at St. Joseph, in the state of Missouri. Glucose is not manufactured at that point, and the complainant must secure its supply from corn-products factories elsewhere and pay the inbound freight charges. The result is that sirup manufacturers at Chicago, where glucose is available without inbound freight charges, are able to control the markets east of the Missouri River. St. Joseph and other Missouri River points take a differential under Chicago to Colorado common points. The complainant is therefore able to market its product in that territory, paying the inbound charges on the raw glucose to St. Joseph, and hold its own with its Chicago competitors. It can successfully compete with them also in other parts of the west. But, with a view of developing a market for its products on the Pacific coast, the complainant shipped a few carloads of this sirup to points in California, and found the results unsatisfactory because of the rate adjustment. Sirup moves from St. Joseph and other Missouri River points to California terminals under a carload commodity rate of 75 cents per 100 pounds. This is a blanket rate applying also from points east of the Missouri River, including Chicago. But, as above explained, sirup manufacturers at Chicago secure their glucose from local corn-products factories. The complainant, on the other hand, gets most of its supply at Keokuk, a Mississippi River crossing, from which the rate into St. Joseph is 18½ cents. It seems, however, that the price of glucose is controlled by the price at Chicago; wherever purchased the price demanded is the Chicago price plus the rate from Chicago. The complainant, therefore, does not even get the benefit of the 18½-cent rate from Keokuk, but buys its glucose there on the basis of the 23½-cent rate from Chicago. This addition to the cost of manufacturing glucose sirup at St. Joseph puts the complainant out of the California markets, the margin of profit being too small to enable it to absorb the difference in the price made to jobbers.

It is that commercial condition that the complainant seeks to overcome by an attack upon the carload rates on sirup to the Pacific coast. There is no allegation in the petition that those rates are unreasonably high, and the president of the complainant company admitted of record that he did not regard them as unreasonable. He explained his contention by saying:

We think we are discriminated against, because we have to pay 23½ cents more for our glucose than Chicago manufacturers.

The rate on sirup to Portland and other north Pacific coast terminals is also 75 cents from Chicago, but from Missouri River points, including St. Joseph, it is only 65 cents. This differential of 10 cents per 100 pounds to those destinations is urged as a reason why St. Joseph should have a differential under Chicago to California points

also. The complainant claims in fact that it ought to have the benefit of a differential of about 21 cents per 100 pounds to all the Pacific coast terminals, and says that as against its competitors at Chicago it can not reach those markets on a reasonable margin of profit without an advantage to that extent in the rates. This proposed differential, it will be observed, is 90 per cent of the amount of its inbound rate of 23½ cents from Chicago on glucose, which comprises that proportion of the manufactured sirup. The differential of 10 cents in favor of the Missouri River to north Pacific coast points is, however, explained of record. Sirup is manufactured at St. Paul and Minneapolis, and the defendants state that the Canadian Pacific, for reasons of its own, established the 65-cent rate from those points to north Pacific coast terminals. This required the defendants to meet that rate from the twin cities, and in doing so they extended it from St. Joseph and other Missouri River points that are ordinarily grouped with St. Paul and Minneapolis on traffic to the north Pacific coast.

On the whole record we see no occasion for disturbing the present adjustment, and an order must therefore be entered dismissing the complaint.

No. 3705.

GEORGE E. PIERCE

v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY ET AL.

Submitted May 12, 1911. Decided March 11, 1912.

Rate of $1.30 per net ton for the transportation of certain carload shipments of coal from Chalfant Mines, Braznell, and Newell Scales, Pa., to Erie street, Buffalo, N. Y., not found to have been unreasonable or unduly discriminatory.

William H. Frederick for complainant.

D. P. Connell for Pittsburgh & Lake Erie Railroad Company; Lake Shore & Michigan Southern Railway Company; and New York Central & Hudson River Railroad Company.

Henry Wolf Biklé for Pennsylvania Railroad Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION:

BY THE COMMISSION:

Complainant is a grain dealer operating an elevator located on Erie street, west of Main street, Buffalo. N. Y. By petition, filed December 12, 1910, he alleges that defendants' rate of $1.30 per net ton for the transportation of coal during the period from July 7, 1909, to March 20, 1910, from Chalfant Mines, Braznell, and Newell Scales, Pa., for delivery at complainant's elevator on the New York Central & Hudson River Railroad tracks was unreasonable and discriminatory in that said rate exceeded the rate applicable from said points of origin to other points of delivery on the New York Central & Hudson River Railroad in Buffalo. Reparation is asked.

Between July 7, 1909, and March 20, 1910, complainant received at its elevator on Erie street, Buffalo, 17 carloads of coal as follows: From Chalfant Mines, via the Pittsburgh, Cincinnati, Chicago & St. Louis Railway; Pennsylvania Railroad; and New York Central & Hudson River Railroad, 6 carloads, weighing 466,600 pounds; from Braznell, via the Pennsylvania Railroad and New York Central & Hudson River Railroad, 7 carloads, weighing 431,400 pounds; from

Newell Scales, via the Pittsburgh & Lake Erie Railroad; Lake Shore & Michigan Southern Railroad; and New York Central & Hudson River Railroad, 4 carloads, weighing 353,000 pounds. The aggregate weight of these shipments was 1,251,000 pounds, and freight charges were collected in the total sum of $813.18 at the rate of $1.30 per net ton.

Prior to May 1, 1909, the rate on coal from the points of origin above mentioned for delivery to points east of Main street was $1.25 per net ton, while for delivery to points west of Main street the rate was $1.30. Effective on that date the $1.25 rate was extended to Black Rock, a point west of Main street, but no reduction was made in the rate to Erie street. On April 1, 1910, the rate for all deliveries in Buffalo was made the same, $1.25 per net ton. Complainant is not attacking the present rate, but merely seeks reparation on shipments of coal which moved during the period when the rate to Erie street was higher than the rate to Black Rock and points east of Main street.

Coal from Pennsylvania mines for local delivery on the tracks of the New York Central in Buffalo is delivered to that road by the Pennsylvania Railroad at Emslie street and by the Lake Shore & Michigan Southern at William street. Deliveries to points east of Main street are made by a direct haul. In making deliveries to Erie street, however, because of restrictions imposed upon the New York Central by the city council of Buffalo prohibiting the movement of freight across Main street in a direct line from the interchange points at Emslie and William streets, it is necessary to haul the traffic entirely around the city of Buffalo, on the belt line, through Black Rock, a distance of about 11 miles. At the time these shipments moved the New York Central charged its connections, and at the present time charges for deliveries of coal from its interchange tracks to Black Rock and intervening points 15 cents per ton, and between Black Rock and Erie street 25 cents per ton. These charges were then, and are now, absorbed by the Pennsylvania Railroad and the Lake Shore & Michigan Southern. It will thus be seen that while the rate on this traffic to Erie street was higher than the rate to Black Rock, the revenue derived therefrom by the latter roads, on account of the higher switching charge, was less than on similar traffic to Black Rock.

The distance via Black Rock to Erie street from the interchange points above mentioned is practically the same as to Tonawanda, N. Y., via Black Rock, and the switching charge in each instance is the same. By reason of this, the rates from the points of origin set forth to Erie street have always been made the same as to Tonawanda. On April 1, 1910, the rate to Tonawanda was reduced to $1.25. Defendants state that this reduction was caused by the great industrial development in the territory between Buffalo and Tona-

wanda during the last few years, due in a large measure to the improvement of the harbor between Black Rock and Tonawanda by the United States Government. To preserve the relationship between Tonawanda and Erie street, the rate to the latter point was likewise reduced. The Commission has repeatedly held that the voluntary reduction of a rate by a carrier does not in itself, without proof that the former rate was unreasonable, furnish a sufficient basis for reparation.

Testimony was offered by defendants to show that while competition between the roads entering Buffalo from the north and the roads entering from the south has for a long period made rates on merchandise the same to all parts of Buffalo, this competitive condition does not exist with respect to coal, because such traffic comes to Buffalo from only one direction.

Considering all the facts and circumstances disclosed by the record we are of the opinion, and find, that the rate charged has not been shown to be unreasonable or unduly discriminatory. The complaint must be dismissed, and it will be so ordered.

No. 4346.

WHITELAND CANNING COMPANY

v.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.

Decided March 11, 1912.

For reasons stated in the report herein, petition for rehearing denied.

REPORT OF THE COMMISSION ON PETITION FOR REHEARING.

PROUTY, *Chairman:*

Effective June 1, 1911, certain carriers in official classification territory advanced the rate on evaporated milk in less-than-carload lots from 20 per cent less than third class to third class. Thereupon the complainant, which operates a factory for the manufacture of this article upon the line of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, filed a complaint attacking the advance and making that company and several of its connections defendants.

After answers had been filed the case was assigned for hearing, was duly heard, and submitted on briefs. The Commission held that the advance had not been justified, that the advanced rate was unreasonable, and ordered a restoration of the old rate. 22 I. C. C., 261.

The New York Central lines now file a petition for a rehearing of that case upon the ground that while those lines were not parties to the proceeding they are indirectly affected by the result, and inasmuch as they had no official notice of the pendency of these proceedings they insist upon the right to be heard.

The order in this case was necessarily against the defendants and could only run against those carriers named as defendants. It may be true that the New York Central lines find it convenient or even necessary to observe at some points the rate established upon the lines of its competitors, but this presents no good reason for a rehearing of this case. The original proceeding was against a prominent member of the greatest railroad system in the United States. Upon the hearing that railway was represented by its attor-

ney and by one of its leading traffic officials. The defendant presented to the Commission whatever evidence and whatever argument it desired. The case was fully heard and a conclusion reached, and it would be unjust to the complainant to strike off the order made and open this case for further proceedings upon the ground that some other line, not a defendant, may be indirectly affected by that order.

It is undoubtedly true that there are many particulars in which it is in the interest of both the railway and of the public, as well as necessary from a competitive standpoint, that practices and regulations should be identical. One of these particulars is manifestly the classification of freight. Carriers, in recognition of this fact, have established a classification committee, which has control of these matters within official classification territory. It would seem to be the commonest prudence on the part of these carriers to require every complaint affecting this classification to be forthwith submitted to the official classification committee, which should be authorized to make a full presentation of the matter to the Commission. But while this is true, the official classification committee is not a body against which the orders of this Commission can run, and it is no part of our duty to bring to the attention of this committee proceedings which affect that classification. This particular complainant could only bring his case against the railroad as he did, and our order could only run against the carrier.

Without holding that there may not be cases where carriers may properly ask for a reconsideration of some conclusion reached by reason of the fact that they are indirectly interested in the result and had no notice of the pendency of the proceedings in which the order was made, we hold that in the great majority of instances and in this instance that is not a valid reason.

Subsequently to the filing of this petition by the New York Central lines, the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company itself filed a petition for a rehearing, stating in general that it desired to introduce additional testimony tending to show that the rates governing the transportation of evaporated milk can not properly be compared with those governing the transportation of canned fruits and vegetables, and further, "that any reduction in the rates on evaporated milk will undoubtedly result in a demand being made by the producers of powdered milk as well as condensed milk that a corresponding reduction be made in the transportation rates on these commodities."

Upon the hearing the complainant compared the rates on canned vegetables and fruits with those on evaporated milk, and the defendant introduced no testimony tending to show that this comparison was improper, although as already said, one of its chief traffic

officials was present at the hearing. It also appeared in that case that rates on condensed milk might be and probably would be affected, although powdered milk was not referred to in the testimony.

The petition does not show how the above evidence, if introduced, would alter the conclusion already reached, and still less does it indicate any reason for not having introduced this testimony upon the first hearing. When full opportunity for hearing has been accorded carriers must show as ground for a rehearing that the evidence which they now offer either could not or ought not to have been introduced upon the first hearing, and also that this evidence, if introduced, would probably lead to a reversal of our previous conclusion. It is no hardship to require carriers in the trial of their cases before this Commission to observe to a very moderate degree the same rules which would obtain in a trial at law. Whenever this Commission is convinced that its order works substantial injustice it will unhesitatingly set aside that order, but we can not continually retry these cases upon the mere statement of the carrier that it desires to introduce some further testimony and believes that the decision of the Commission is wrong.

The petition for rehearing should be denied.

IN THE MATTER OF THE APPLICATION AND USE OF MILEAGE, EXCURSION, AND COMMUTATION TICKETS FOR THROUGH TRANSPORTATION IN CONNECTION WITH OTHER LAWFULLY ESTABLISHED FARES.

Decided March 11, 1912.

Questions relating to the application and use of mileage, excursion, and commutation tickets for through transportation in connection with other lawfully established fares considered and discussed, and definite statements made relative thereto.

Report of the Commission.

Clements, *Commissioner:*

To prevent discrimination and promote equality of treatment in charges and services the law requires not only definite statement of the amount of the rates, fares, and charges of carriers in their established schedules, but equally definite statement therein of all privileges and facilities granted or allowed in connection therewith, and any rules or regulations which in any wise affect or determine any part or the aggregate of the rates, fares, or charges, or the value of the service rendered to the passenger, shipper, or consignee.

It is clear that no schedule complies with the requirements of the law which does not definitely and fully state the charges, on the one hand, and the services to be rendered therefor, on the other.

Adherence to the established schedules, which is also required by the law, will not permit deviation from the services, facilities, and privileges offered in the tariffs any more than from the amount of the rates, fares, or charges therefor.

In no other way than by a strict observance of both of these necessary features of the published schedules can unjust discriminations be avoided.

It may be that often a carrier, without expense or serious inconvenience to itself, might afford accommodations or facilities in particular instances, and therefore not only be willing but glad to afford such accommodations to the extent that it could do so without expense or inconvenience, and yet be unwilling to assume the obligation of rendering such accommodations or facilities at all times when demanded, because that obligation might become burdensome.

The practice of rendering or refusing special accommodations or facilities at will is one of the evils which the law has undertaken to eradicate. It is neither the purpose of the law nor the policy of the Commission in the administration thereof to restrain carriers

from affording the public all possible facilities, accommodations, and conveniences consistent with that equality of treatment which the law requires and with the established tariffs intended to promote the same.

It is true that the carriers, individually and jointly, may afford many facilities, accommodations, and conveniences to shippers and passengers which they may not be compelled to afford, but they are no more at liberty to unjustly discriminate with respect to such services than with respect to those things which, under the law, they may be compelled to do. Among the things which they are permitted but not compelled by the act to do is to establish excursion, commutation, and mileage tickets, the latter usually being designated mileage books.

A number of questions have been presented to the Commission respecting the lawful application and use of the various forms of passenger tickets, whether issued pursuant to the requirements of the law or by its permission, and the checking and transportation of baggage of passengers.

Unlike a package of freight, the passenger is able to reconsign himself and, therefore, by purchasing tickets at two or more points, to take advantage of combinations of excursion or mileage fares and joint or local regular fares. No good purpose is served by requiring the passenger to thus inconvenience himself in order to secure his transportation at the lower cost, if the carriers are willing to provide in their tariffs that all who desire it may have the benefit of the lower charges.

Having in view both the requirements and permissions of the act and the necessity for uniform practices in the application and use of the different forms of transportation for passengers, the Commission, upon full consideration, interprets the law in respect to these matters as follows:

1. It is lawful for a carrier or carriers having duly established in the manner required or authorized by law any form of excursion, commutation, or mileage fares, to provide in their schedules for the use of any of said fares as basing fares, thus enabling other carriers to use the same, in connection with their own duly established fares, for the through transportation of passengers on any physical line of connecting carriers, upon a combination of tickets over all of the component parts of such through line, and for the carriers composing or operating such through line to afford through sleeping car, ggage checking, and other through accommodations in the same n r as in case of through tickets over the entire line, provided nger demanding such through transportation and through dations shall present to the initial carrier at the point of ng the lawfully authorized tickets covering the lines necessary

for the entire through journey. It, however, is not deemed lawful for a carrier to check a passenger's baggage beyond the point to which he presents tickets at the point of starting, upon the mere declaration of intention to go farther upon another ticket to be thereafter purchased, or otherwise.

2. Upon duly established tariff authority therefor the initial carrier may issue to a passenger a through ticket for the sum of two or more duly established fares applicable over the several connecting roads composing the through physical line from the starting point to destination, or may issue additional or separate ticket or tickets at lawful tariff fares therefor, which, in connection with the ticket or tickets already held by the passenger, will cover the entire journey that the passenger desires to take.

3. In order that unjust discrimination may be avoided it is necessary, to the end that tickets of the kind above referred to may be made available for the purposes specified and in the manner indicated, that definite and specific provision therefor be contained in established tariff schedules which are filed with this Commission and also in the tariff schedules that contain the excursion, commutation, or mileage fares that are to be so used. When tariffs contain such provisions the combination so authorized may be used in lieu of the regular joint or local fares between the points covered by the combination.

No. 3243.

SIOUX CITY TERMINAL ELEVATOR COMPANY ET AL.

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.

Submitted April 8, 1911. Decided March 11, 1912.

In the purchase of grain in the states of South Dakota, Nebraska, Minnesota, and Iowa, Sioux City comes in direct competition with Omaha, Kansas City, and Minneapolis, principally with Omaha. These competitive markets pay the local rate inbound from point of production and proportional rates out to the various markets of distribution, including principally Minneapolis on wheat and Chicago and southeastern territory on coarse grains. Sioux City, however, has no proportional rates outbound to the same destinations, and because of the high level of its local rates in and out is restricted to the use of joint rates from points of production to ultimate destinations, with the privilege of stopping the grain at Sioux City for the purpose of cleaning, milling, or otherwise treating. Upon complaint of alleged unjust discrimination and prayer for the establishment of reasonable local rates from the states named to Sioux City and of proportional rates out with reasonable relation to the proportionals from Omaha to the markets named, *Held:*

1. That competitive conditions required the establishment and maintenance of the Omaha and Kansas City proportional rates which do not exist at Sioux City, and therefore that the circumstances and conditions surrounding the transportation through the respective markets are substantially dissimilar.
2. That as to the great bulk of its grain tonnage, Sioux City labors under no substantial disadvantage, but is on an equality in rate and choice of markets with Omaha.
3. That the only substantial advantage to Omaha over Sioux City shown by this record is the back-haul privilege from such territory as Omaha can reach in competition with Sioux City and other markets in direct line of flow of the grain from point of origin to ultimate destination, which advantage, however, as it obtains on a comparatively small tonnage, is not sufficient basis for an order in accordance with the prayer of the petition, in serious disturbance of western grain rates, with substantial loss of revenue to the carriers.
4. That the existing local rates from the states named to Sioux City are unreasonable and unjustly discriminatory, and case held open for the parties to submit a proposed readjustment of these rates to the Commission for its consideration and approval.

Milchrist & Scott and *Mayer, Meyer, Austrian & Platt* for complainants.

George T. Bell for Sioux City Commercial Club.

Samuel W. Clark and *P. W. Dougherty* for state of South Dakota.

E. J. McVann for Commercial Club of Omaha.

George A. Schroeder for Milwaukee Chamber of Commerce.

T. A. McGrath for Minneapolis Traffic Association.

William Ellis and *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

S. A. Lynde for Chicago & North Western Railway Company.

James B. Sheean for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

A. P. Humburg for Illinois Central Railroad Company.

J. D. Armstrong for Great Northern Railway Company.

James E. Kelby for Chicago, Burlington & Quincy Railway Company.

Report of the Commission.

Clements, *Commissioner:*

In this complaint Sioux City, Iowa, asks for lower local rates inbound on grain and the establishment of proportional rates outbound to the principal markets of distribution, including Chicago, Minneapolis, and the southeast, which adjustment it alleges is necessary to place it upon a substantial equality as a grain market with Omaha, Nebr., and other competing markets which have the proportional basis. There are no proportional rates outbound from Sioux City. Its grain is handled under joint through rates from point of production to ultimate destination, which permit of stopping the grain at Sioux City for cleaning, milling, or otherwise treating. In addition to these joint rates, there are only the locals to Sioux City and locals out. Comparatively, Sioux City's inbound rates are higher than the local rates to the other markets referred to, and its outbound local rates are greatly in excess of the proportional rates from those markets.

The Minneapolis Traffic Association, Milwaukee Chamber of Commerce, and Board of Railroad Commissioners of South Dakota have intervened.

Sioux City is situated somewhat north of the center of the western boundary of Iowa. It is on the Missouri River, 100 miles north of Omaha, and practically at the southeastern corner of South Dakota, which dips down between northeastern Nebraska and western Iowa. It is thus practically at the center of the eastern boundary of the states of South Dakota and Nebraska combined, with the state of Iowa to the east and extending south almost to the southern boundary of Nebraska. North of Iowa and east of South Dakota is Minnesota.

In all of these states Sioux City competes in the purchase of grain, and while engaged in the general trade, it is principally a coarse-grain market. Northern South Dakota and northern Minnesota are wheat territories, but southern South Dakota and the states of Iowa and Nebraska are coarse-grain fields, corn predominating, but with barley and oats in varying quantities, and some spring wheat of inferior quality in northern Nebraska. Southern Minnesota is comparatively unimportant to Sioux City, as its grain is attracted to Minneapolis or Milwaukee; and while northwestern Iowa is of some importance, Sioux City's chief concern is in South Dakota. Roughly described, the Missouri River divides the state of South Dakota into two equal parts, except for a substantial southwestern corner in the eastern half. It then continues along the remaining fourth of the boundary between South Dakota and Nebraska, south of east to Sioux City, thence south between Nebraska and Iowa, passing through Omaha and Kansas City. It is that part of South Dakota east of the Missouri River and south of the Madison-west-to-Wessington-Springs line of the Chicago, Milwaukee & St. Paul Railway, which is most important to Sioux City in its coarse-grain supply. There is practically no grain raised west of the Missouri River in South Dakota. Second in importance to Sioux City is that portion of Nebraska north of a line drawn about midway of Omaha and Sioux City, especially the northeastern part of this section. The principal markets for grain from the states named are Minneapolis for wheat; Chicago for all grains; St. Louis for coarse grains, especially oats; and Omaha and Kansas City for coarse grains.

Defendants' routes in so far as they affect the Sioux City grain trade are as follows:

The Chicago, Milwaukee & St. Paul has a direct route from its network of lines in South Dakota immediately tributary to Sioux City through that market to Chicago, but no direct route to Omaha.

The Chicago & North Western lines in eastern South Dakota also reach Chicago by direct route through Sioux City. From this carrier's territory in Nebraska west of Norfolk a direct route also is available through Sioux City to Minneapolis and Chicago in connection with the Chicago, St. Paul, Minneapolis & Omaha from Norfolk. The North Western's own route from western Nebraska to Sioux City involves a back haul from Norfolk south to Blair and north to Sioux City. The Chicago & North Western also reaches Omaha from Sioux City through Council Bluffs. The Chicago, St. Paul, Minneapolis & Omaha affords a direct route from Sioux City to Omaha through Emerson and Blair.

The Great Northern extends from Sioux City to Minneapolis and Duluth, but has no rails south of Sioux City or to Chicago.

The Illinois Central is a direct line from Sioux City to Chicago, St. Louis, Cairo, and Memphis, but does not extend west of the Missouri River.

The Chicago, Burlington & Quincy is of minor importance to Sioux City direct, as its only line immediately tributary to Sioux City from the grain producing districts in question is from O'Neill, Nebr., directly east to Sioux City. Its only other Sioux City connection is south to Ashland, where it connects with the Western-Nebraska main line to Omaha and Chicago. The Burlington also has a direct route from Omaha to Kansas City and St. Louis.

Thus all the defendants reach Sioux City and Omaha except the Great Northern; only the Illinois Central and Chicago, Burlington & Quincy reach St. Louis; and the Illinois Central, which, as stated, does not extend west of the Missouri River, is the only carrier to an Ohio or Mississippi River crossing.

Sioux City has a population of 50,000, an elevator with a capacity of 200,000 bushels, capable of handling 6,000,000 bushels a year, and a milling capacity of 2,000 barrels a day. While it has a board of trade, no prices are quoted or grain sold thereon, the board's principal function being the determination of weights and grades in conjunction with the Western Weighing Association. It also has an extensive live-stock and packing industry, a wide wholesale and jobbing trade, and large banking interests. By reason, therefore, of its general standing, financial and commercial, and its location on the Missouri River, it asks for a similar basis of grain rates as that applied from Omaha and Kansas City, as the transit system is said to be decidedly inadequate for its needs as a primary market for grain. Omaha is Sioux City's real competitor, and will therefore be the principal point of comparison in this report.

As illustrative of the respective rate bases, it may be explained that Omaha pays a local rate in and proportional out to ultimate destination, the proportionals being lower than the outbound locals from Omaha to the same destinations, whereas Sioux City, as stated, has no proportional rates outbound, but is compelled to pay, upon original tender of the grain at a station in South Dakota, for instance, the joint through rate to ultimate destination, say Chicago, with the privilege of stopping the grain at Sioux City for transit purposes. Grain through Sioux City practically is restricted to these joint rates with transit because of the extremely high level of the local rates in and out, the former from South Dakota being the regular distance tariff, which is higher in some instances than the local rates to Omaha, and but slightly lower than the joint rate to Chicago with Sioux City transit. The joint rates with transit are not complained of as such, the proportional rates being asked for in addition.

Complainants allege various disadvantages under the transit system compared with the proportional basis. They say its application only when the outbound movement from Sioux City is in the same general direction as the shipment to that point limits Sioux City in the choice of its markets; that money is tied up in transit balances, with resultant interest charges; and that the privilege is curtailed of accumulating grain in large quantities from near-by territory in advance of actual sales and knowledge of ultimate destination.

The record shows that transit balances may be transferred on outbound grain to all ultimate destinations that do not involve a back haul with respect to point of production and the original and substituted destinations; that is, that the equivalent is extended on such grain stopped at Sioux City of the privilege of reconsigning upon basis of the joint rate from point of production to ultimate destination.

Complainants aver that the proportional basis would mean a closer market to the farmer, more expeditious handling with less deterioration in transit, and higher prices. They also complain that the products of grain milled at Sioux City, which are distributed largely in Iowa, can be sold under transit only at points directly on the originating carrier's rails intermediate to Chicago, and upon payment of the Chicago rate. They allege another serious handicap on Chicago, Milwaukee & St. Paul grain stopped at Sioux City, as that carrier's transit tariffs, in permitting only a single stop, denies to Sioux City the privilege of selling grain to Iowa mills like Cedar Rapids and Des Moines. The North Western's tariffs, however, provide for a double stop. It also appears that the application of the Omaha proportional rates outbound is not dependent upon a strict accountability as to back haul with reference to the inbound haul, and that proportional rates permit the mixing of outbound products, which privilege is denied to Sioux City under the transit system.

The complaint therefore specifically alleges that the local rates from South Dakota, Minnesota, Iowa, and Nebraska to Sioux City and the local rates from Sioux City to Chicago, Cairo, Memphis, New Orleans, Minneapolis, and Kansas City are unreasonable *per se* and in comparison with the local rates to and the proportional rates from Omaha and Minneapolis to the same markets. The prayer is that there be established reasonable local rates from the states named to Sioux City and proportional rates out from that market to the gateways named. The petition prays for an equality with Omaha outbound to all these markets, but at the hearing the proportional rates suggested to Chicago were the same as apply from Omaha; to

the southeast 1 cent higher than from Omaha; and to Minneapolis 1 cent lower than from Omaha. The suggested local rates to Sioux City are based upon rates from stations in Nebraska to Omaha and in Minnesota to Minneapolis for like distances.

The following is a comparison of the local rates in cents per hundred pounds from Sioux City with the proportional rates from Omaha and Minneapolis to the markets named in the petition:

From—	To Chicago.			To Minneapolis.			To Kansas City.		
	Distance.	Wheat.	Corn.	Distance.	Wheat.	Corn.	Distance.	Wheat.	Corn.
	Miles.	*Cents.*	*Cents.*	*Miles.*	*Cents.*	*Cents.*	*Miles.*	*Cents.*	*Cents.*
Sioux City	510	18	17	280	12.5	11.5	288	13.6	12.3
Omaha	489	12	11	380	11	10	200	5.5	5.5
Minneapolis	420	10	7.5	....	....	....	....	....	....

From—	To Cairo.			To Memphis.			To New Orleans.		
	Distance.	Wheat.	Corn.	Distance.	Wheat.	Corn.	Distance.	Wheat.	Corn.
	Miles.	*Cents.*	*Cents.*	*Miles.*	*Cents.*	*Cents.*	*Miles.*	*Cents.*	*Cents.*
Sioux City	666	19.1	16.75	780	23.1	20.75	1,160	29.1	26.75
Omaha	566	11	10	680	15	14	1,060	21	20
Minneapolis	681	[1] 15	12.5	....	....	....	....	....	....

[1] To Evansville—Crossing used from Minneapolis to the southeast.

As illustrative of the local rates from South Dakota, the following table is fairly representative:

From—	To Sioux City.			To Omaha.			To Minneapolis.		
	Distance.	Wheat.	Corn.	Distance.	Wheat.	Corn.	Distance.	Wheat.	Corn.
	Miles.	*Cents.*	*Cents.*	*Miles.*	*Cents.*	*Cents.*	*Miles.*	*Cents.*	*Cents.*
Elk Point	21	6.5	6.5	176	12.5	11	368	12.5	11.5
Canton	71	11	11	226	13	11.5	318	12	11.5
Madison	132	15.5	15.5	287	15.5	13	314	13	13
Mitchell	138	15.5	15.5	283	14	12.5	322	15	14.5
Chamberlain	205	19	19	350	22.5	21	483	24	24

From the above factors combinations result as shown below. For the purpose of simplifying the table only the coarse-grain rate is used, the wheat rates being equal to or slightly in excess of the coarse-grain rates in all cases. The New York rate adds 16 cents to the rate to Chicago; and Cairo, as it bears a fixed relation to Memphis, is taken as representative of the southeastern situation. Attention is particularly invited to the joint through rates from points of production to Chicago with privilege of stopping at Sioux City for transit purposes.

From—	To Chicago.				To Cairo.			
	* Combination through Minneapolis.	Combination through Omaha.	Combination through Sioux City.	Joint rate through Sioux City, with transit.	Combination through Minneapolis.	Combination through Omaha.	Combination through Sioux City.	Joint rate through Sioux City, with transit.
	Cents.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	
Elk Point	19	22	23.5	17	24	21	23.25	(1)
Canton	19	22.5	28	19	24	21.5	27.75	(1)
Madison	20.5	24	32.5	19	25.5	23	32.25	(1)
Mitchell	22	23.5	32.5	21	27	22.5	32.25	(1)
Chamberlain	31.5	32	36	27.5	26.5	31	35.75	(1)

* Tariffs provide for Omaha combination with transit privilege at Sioux City.

We have also selected representative points in Nebraska from which local rates inbound are as follows:

From—	To Sioux City.			To Omaha.			To Minneapolis.		
	Distance.	Wheat.	Corn.	Distance.	Wheat.	Corn.	Distance.	Wheat.	Corn.
	Miles.	*Cents.*	*Cents.*	*Miles.*	*Cents.*	*Cents.*	*Miles.*	*Cents.*	*Cents.*
Coburn	12	7	6	112	11.05	9.35	292	14	12.5
Emerson	29	8	7	94	10.2	8.5	309	15.25	13
New Castle	39	8.5	7.5	138	11.47	9.77	319	15	13.5
Laurel	47	9	8	120	11.9	10.2	334	16.5	14.5

Following are the through combinations on corn from the above stations to Chicago and Cairo, and joint through rates with Sioux City transit:

To Chicago.

From—	Combination through Minneapolis.	Combination through Omaha.	Combination through Sioux City.	Joint rate through Sioux City, with transit.
	Cents.	*Cents.*	*Cents.*	*Cents.*
Coburn	20	20.35	23	19.5
Emerson	20.5	19.5	24	19.5
New Castle	21	20.77	24.5	19.5
Laurel	22	21.2	25	20.5

To Cairo.

From -	Combination through Minneapolis.	Combination through Omaha.	Combination through Sioux City.	* Joint rate through Sioux City, with transit.
	Cents.	*Cents.*	*Cents.*	
Coburn	25	19.35	22.75	(1)
Emerson	25.5	18.5	23.75	(1)
New Castle	26	19.77	24.25	(1)
Laurel	27	20.2	24.75	(1)

no joint rates through Sioux City from that part of Nebraska which involves a back haul.

Defendants contend that Sioux City is at no disadvantage with Omaha, but that as the above tables show, it can, except from the nearest stations to Omaha, reach Minneapolis and Chicago under joint rates with transit at a lower aggregate through charge than the same grain would pay through Omaha to the same markets. They also insist that, inasmuch as South Dakota grain destined to the southeast and stopped at Sioux City pays the Omaha combination, Sioux City is on an absolute parity with Omaha on South Dakota grain to the southeast. Defendants also contend that there exists a substantial dissimilarity of conditions at Sioux City and Omaha, respectively, the difference being twofold:

1. It is said that Sioux City is not a primary grain market and is entitled to no more in the way of rates than many interior points in South Dakota and Minnesota of equal or greater elevator and milling capacity, such as Mankato, Kasota, Sioux Falls, and Yankton, and that similar demands will come from these cities if the proportional basis is granted to Sioux City. The carriers say the present question, therefore, is not one of duty toward a primary grain market, but whether the carriers should be required to assist in making Sioux City such a market.

2. It is also alleged that the proportional rates from the other markets are the result of competitive conditions which do not exist at Sioux City; that the Omaha proportionals were forced by competition of the Chicago Great Western Railroad Company, which, having no lines west of the Missouri River, established them for the purpose of sharing in the outbound tonnage on Nebraska grain brought by the Union Pacific Railroad to Omaha, its eastern terminus, and by other Nebraska roads eastward to and through Omaha; and that the general basis was adopted by all lines only after a vigorous rate war. The Kansas City proportionals also are alleged to be due to competitive forces. Defendants also insist that its mere location on the Missouri River does not make Sioux City a natural breaking point for rates, as east and west lines have never terminated there in temporary check of through traffic, having originally been constructed through Sioux City, whereas for many years Omaha and Kansas City were the western termini of the principal trunk lines and a natural breaking point for rates when their lines were extended west of the Missouri River. It will be recalled in this connection that practically all South Dakota grain originates east of the Missouri River.

As to the effect of the order prayed for, defendants say that the sum of the local rate from the nearest point beyond Sioux City and the proportional rate out would fix the maximum rate from intermediate territory, necessitating many reductions. To illustrate, the

North Western selects an Iowa station 5 miles from Sioux City, from which the rate to Sioux City is 3.7 cents on corn. Add to this the same outbound proportional to St. Louis as applies from Omaha and the resulting 11.7-cent rate is the maximum that could lawfully be charged from intermediate stations to St. Louis. It is stated that the local rates from the vicinity of Sioux City in Iowa are in no cases lower, but generally higher, to St. Louis than to Chicago, and that therefore the St. Louis rate must be the maximum rate to Chicago. Observing this theory, reductions would be necessitated on the Chicago & North Western and the Chicago, St. Paul, Minneapolis & Omaha lines combined from 351 stations intermediate to Chicago. Upon the same theory, with Sioux City proportionals to the southeast on basis of 1 cent higher than from Omaha, the Chicago intermediate rate would be reduced from 232 stations and the St. Louis intermediate rate from 214 stations; and with proportionals from Sioux City to Chicago on the same basis as from Omaha—that is, of 12 and 11 cents on wheat and corn, respectively—105 stations in Iowa and 25 in Nebraska would suffer reductions. It is said that the theory of the St. Louis rate applying as the maximum to Chicago is particularly applicable to the Chicago & North Western, inasmuch as this carrier reaches St. Louis only through connections south from Peoria, which is a Chicago rate point. The tariffs show that as to some points of origin Peoria takes Chicago rates, and as to other points of origin takes differentials under Chicago. In similar statements the Illinois Central, Great Northern, and Chicago, St. Paul, Minneapolis & Omaha apprehend numerous reductions, which the carriers claim would also be reflected to Minneapolis, whose rates must bear a reasonable relation to the rates to Chicago. The estimated loss of revenue to the North Western alone is half a million dollars annually, and to the Illinois Central $132,000. While denying the accuracy of these estimates, as well as the necessity of maintaining the St. Louis rate as the Chicago maximum, complainants admit that some reductions must result, insisting in this connection, however, that the general level of rates in Iowa east of Sioux City is so much higher than in southern Iowa that a reasonable latitude exists for such changes as may be necessary without unreasonably decreasing revenues or seriously disturbing rate conditions. Complainants further suggest that the Commission might relieve defendants, if necessary, from the operation of the fourth section, or long-and-short-haul clause, of the act from within a radius of 20 or 30 miles from Sioux City.

If the granting of the prayer of the petition is to seriously disturb rate conditions, it should clearly appear that Sioux City labors under an unreasonable rate disadvantage in comparison with Omaha,

as well as that the conditions of transportation are substantially similar at the respective markets. Competition of controlling force can not be ignored by the Commission in determining whether an advantage in rate at the competitive point is undue or is one not chargeable to the carriers defendant because involuntarily made. It would also seem to follow, inasmuch as the principal markets, Chicago and the southeast, are open to the great bulk of the Sioux City grain upon an equality or better compared with Omaha and Minneapolis, that Sioux City's alleged disadvantage must be largely if not wholly due to causes other than the rate. And this suggestion seems to be fully verified on South Dakota grain to the southeast, to which territory, as stated, the Omaha combination applies with Sioux City transit, the contention being that, although the rate is the same, Omaha's southeastern grain is not drawn from South Dakota, but from nearby Nebraska territory at much lower local rates to Omaha. Sioux City, however, has the same ultimate advantage under its joint rates with transit on contiguous South Dakota grain to Chicago. Carrying the suggestion a step further, Kansas City might be said to have an undue advantage over Sioux City in shipping Kansas grain to the southeast instead of grain from South Dakota, a contention hardly tenable. Although complainants show that but a very small percentage of Sioux City's South Dakota grain is attracted to the southeast, we can not accept the mere fact as establishing the condition to be due to the rate adjustment, as the rate is open upon the same conditions and alleged restrictions as the rate to Chicago, which is Sioux City's principal market. Omaha's natural advantage of location with respect to the southeast can not be controlled by any lawful order of the Commission any more than Sioux City's similar advantage with respect to South Dakota grain to Chicago can be equalized with Omaha.

Complainants' alleged disadvantages in Nebraska also are largely foreign to the rate adjustment. As stated, Nebraska is a coarse-grain state, and while Sioux City transit is available on Nebraska grain to Minneapolis and Chicago, the contentions are that Minneapolis is not a coarse-grain market; that coarse grain originating on the Chicago & North Western west of Norfolk, Nebraska (which moves thence to Sioux City over the Chicago, St. Paul, Minneapolis & Omaha and thus to Chicago at the direct rate), is largely consumed in the Black Hills district of South Dakota; and that coarse grain originating on the Chicago & North Western south of Norfolk (which via that line direct to Sioux City is backhauled south through California junction, thence north), and on the Chicago, St. Paul, Minneapolis & Omaha northwest of Emerson, as well as on certain branches of the Burlington, is diverted through Omaha because of penalties

of from one to two cents over the direct Chicago rate due to backhauls in reaching Sioux City. It is thus insisted that only from within a very narrow radius of Sioux City can Nebraska coarse grain be handled through Sioux City to Chicago.

Complainants admit that the suggested local rates to Sioux City and proportionals out will, in many instances, aggregate higher through charges on South Dakota grain than the present joint rates with Sioux City transit, thereby emphasizing the impression, which is strongly conveyed throughout the entire record, that what Sioux City wants is not so much the correction of a present substantial rate injustice as to be granted the additional benefits, whatever they may be, incident to proportional rates. Just what these additional advantages are, or why proportional rates, upon the facts of this record, are essential to Sioux City's growth as a market, is not satisfactorily shown. While defendants' witnesses differ on the subject, one testified, and the record in general seems to establish, that Omaha's greatest development as a grain market followed the institution of its proportional rates. It also appears that Omaha was a market of considerable proportions previous to their inception. Whether, therefore, proportional rates made Omaha, or Omaha's increasing demand made the proportional rates, is perhaps a debatable question. But it seems clear that proportional rates alone do not insure a primary market for grain. On the other hand experience has demonstrated that rates adapt themselves largely to commercial and competitive conditions.

Whether Sioux City is a primary market for grain, or entitled to be, is a matter of much discussion in this record. Just what constitutes a primary market has not been defined, if, indeed, the term is susceptible of minute description. One of the important essentials seem to be the ability to accumulate grain in large quantities from nearby territory for ready shipment to changing markets at the highest price. But if we correctly understand this record, Sioux City now, by transfer of transit balances, has the same choice of markets as Omaha on all grain that does not involve a backhaul, including northern Wisconsin on all South Dakota grain originating south of Mitchell, which former state and the southeast are the chief territories of distribution alleged to be closed to Sioux City under the transit system; and we have seen that the southeast is open to Sioux City on South Dakota grain upon the Omaha combination.

But conceding Sioux City's best development to be dependent upon proportional rates, there remains the question of the justification for an order by this Commission. It is established by this record and others before the Commission that competition has played an all-portant part in Omaha and Kansas City's proportional rates.

The present question, therefore, reduced to its simple state, is whether the Commission should order in proportional rates at Sioux City, where similar forces have not been asserted. Manifestly it is no part of the Commission's duty or right to equalize markets, except as that result may be incident to the correction of a substantial injustice in rates, in whatever form published at the respective competitive points.

The one substantial advantage to Omaha established by this record is the backhaul privilege to the extent that it can reach out in competition with Sioux City and other markets in the direct line of flow of the grain from point of production to ultimate destination. We do not consider, however, that Omaha's advantage on this comparatively small tonnage subjects Sioux City to such general disadvantage as to warrant an order in disturbance of the whole western fabric of rates on grain, with substantial loss of revenue to the carriers, for the purpose, not of correcting any present substantial injustice on the great bulk of contiguous Sioux City grain, but of upbuilding the Sioux City market to the extent that proportional rates might accomplish that result.

We need not further discuss the question as to whether Sioux City is a primary market for grain, or attempt to define the term. Whatever its status in that respect, we find that competitive conditions exist at Omaha and Kansas City as determining factors in the establishment and maintenance of proportional rates that do not exist at Sioux City, and that the circumstances and conditions of transportation at the respective markets are substantially dissimilar. We also find that Sioux City, under the present joint rates with transit, is not laboring under such general disadvantage as a grain market, compared with Omaha under proportional rates, as to warrant the prayer of the petition.

We further find that the local rates in issue to Sioux City are unreasonable and unjustly discriminatory. Certain of the carriers admit that these rates are too high and should be readjusted. We shall make no order now fixing these rates, but will hold the case open in the expectation that the respective parties will promptly submit a proposed schedule to the Commission for its consideration and approval. If this is not done by June 15, 1912, the Commission will proceed further as the ends of justice may require.

No. 4129.

MASSEE & FELTON LUMBER COMPANY ET AL.

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted March 7, 1912. Decided April 1, 1912.

1. If rates on manufactured articles are to be constructed with reference to the assembling cost at the point of manufacture, all of the raw materials must be considered, and an argument for a rate adjustment that regards only the transportation cost of one of the raw materials proceeds upon an erroneous theory.
2. Rate of 56 cents on window glass from Pittsburgh to Atlanta, and similar rates to related southeastern destinations, not found to have been either unreasonable or unjustly discriminatory.

Wimbish & Ellis for complainants.

M. P. Callaway for Southern Railway Company; Atlantic Coast Line Railroad Company; Seaboard Air Line Railway; Cincinnati, New Orleans & Texas Pacific Railway Company; Nashville, Chattanooga & St. Louis Railway; Central of Georgia Railway Company; Norfolk & Western Railway Company; Ocean Steamship Company; Pennsylvania Railroad Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

Frank T. Murray for interveners.

Report of the Commission.

McChord, *Commissioner:*

Manufacturers of sash, doors, and blinds in southeastern and Mississippi valley freight association territories here attack the reasonableness of the rate charged them on window glass in carloads shipped from Pittsburgh and seek to have applied thereon the rate now applicable on glazed sash from Chicago to the same destinations. While counsel for complainants vigorously asserted that the reasonableness of the window-glass rate is a vital issue, the complaint is directed mainly at the alleged discriminatory effect of the present rate adjustment whereby, it is averred, because of the relatively excessive rate on window glass from Pittsburgh as compared with the rate on glazed sash from Chicago to the same territory, Chicago can manufacture glazed sash from glass obtained at Pittsburgh and ship the product into the southeast upon lower rates than complainants

can ship their glass from Pittsburgh and the manufactured product to the common southeastern market. Manufacturers of glazed sash in Chicago and St. Louis intervened in opposition to the petition.

For the purpose of this report Atlanta and Chicago will be taken as representative southeastern and western points, respectively. Both obtain their glass from Pittsburgh, Chicago paying 18 cents for a haul of 468 miles and Atlanta 56 cents for 783 miles. Glazed sash take a rate of 38 cents from Chicago to Atlanta.

Almost insignificant in its inception scarcely twenty years ago, the sash, door, and blind industry in the south, after a remarkable growth, to-day, in the territory affected by this complaint, embraces over 150 plants with an aggregate capital of some $6,000,000. In the west what is known as white-pine sash is produced, while the material used by the southern manufacturer is yellow pine. Prior to the advent of the sash manufacturer in the south, the trade was supplied with the white-pine article by the western manufacturer, who continued to dominate the market until about ten years ago. Since then his sales do not appear to have increased, amounting, from July 1, 1910, to July 1, 1911, to about 400,000 sash, requiring approximately 73,000 boxes of glass, while the annual consumption of window glass by the southern factories now amounts to not less than 360,000 boxes, or from twenty to thirty million pounds. Nothing in the record indicates that either article has any particular trade advantage because of its relative superiority, and it seems that whatever handicap the yellow-pine sash may have been under because of the established use of white pine has long since been overcome.

Complainants contend that as the rate on glass from Pittsburgh to Chicago is 18 cents and the rate on glazed sash from Chicago to Atlanta is 38 cents, the western manufacturer can lay down in Atlanta his product at an aggregate transportation charge of 56 cents, which is the same as complainants must pay to transport their glass from Pittsburgh to Atlanta. To Macon, Rome, and Columbus, Ga., and to Montgomery, Ala., the so-called combination on Chicago is also 56 cents, and the rate on glass from Pittsburgh, respectively, 58, 56, 57, and 57 cents. To such points as Hawkinsville, Cordele, Bainbridge, and Washington, Ga., to which the southern manufacturer distributes, the western manufacturer has an advantage of from 11 to 20 cents per 100 pounds; that is, under complainants' theory, and upon this theory rests the charge of discrimination.

Under the rapid growth and development of our many industries, factories widely separated are daily competing in common markets. That this competition should be encouraged both in the interest of the manufacturer and the consumer, so long as freight rates are reasonable and nondiscriminatory, merely need be stated. But in

determining whether or not one section has an advantage over another in marketing its products in a common territory, if it be proper to consider more than the transportation cost of the finished article, we can not take the assembling cost of only one of the raw materials and ignore that of another equally as important. In the comparisons made by complainants only the rates on glass into Chicago and on glazed sash out are considered, no allowance being made for the open sash into which the glass is placed, the lumber for which is drawn almost entirely from the Pacific coast. In the white-pine glazed sash lumber constitutes 40 per cent of the weight and glass 60 per cent; in the yellow-pine sash the proportions are, respectively, 55 and 45 per cent. Yellow pine lies virtually at the door of the southern manufacturer, and involves an almost negligible element of cost; but from the source of the glass supply he is considerably removed. The position of the western manufacturer is reversed; he is nearer the glass supply and more removed from his white-pine-producing territory. Most of the open sash used by the Chicago manufacturer is made at Oshkosh and Merrill, Wis. To these points the lumber takes a rate of not less than 55 cents, and from there to Chicago a rate of 9.5 cents on open sash, or an aggregate of 64.5 cents, with no allowance for waste in manufacturing the sash. Forty per cent of 64.5 cents is 25.8 cents, the transportation cost to Chicago of the open sash used in 100 pounds of glazed sash; and 60 per cent of 18 cents is 10.8 cents, the transportation cost of the glass used in 100 pounds of glazed sash, a total assembling cost of 36.6 cents for 100 pounds of glazed sash. Adding the rate of 38 cents to Atlanta, it costs the western manufacturer 74.6 cents per 100 pounds to place his glazed sash in that city. Forty-five per cent of the weight of a yellow-pine sash is glass, upon which the rate to Atlanta is 56 cents per 100 pounds, or 25.2 cents for the amount of glass used in 100 pounds of glazed sash. The average rate on yellow-pine lumber into Atlanta appears to be about 7.1 cents, but allowing the maximum rate of 15 cents per 100 pounds we have an assembling cost of 8.25 cents for the 55 pounds of yellow-pine lumber used in 100 pounds of yellow-pine glazed sash, or a total transportation cost to Atlanta of 33.45 cents for 100 pounds of yellow-pine glazed sash. Instead of a disadvantage, the southern manufacturer would seem to have an advantage of not less than 3.15 cents in his total assembling cost and not less than 41 cents in the cost of his glazed sash on the Atlanta market. Complainants' calculations are faulty, because they assume that 100 pounds of glass is used in 100 pounds of glazed sash, and no account is taken of the lumber, which approximates 50 per cent of the weight of the completed article. What is said regarding Atlanta, to a greater or lesser extent applies to the other points in this territory.

It is therefore evident that so far as the aggregate relative transportation costs are concerned the southern manufacturer is at no disadvantage compared with his western competitor, and no discrimination as between these sections can be found to result from the present rate adjustment.

There is also an allegation that window glass is unjustly discriminated against in favor of glazed sash, but this is not supported by the evidence. Prior to December, 1902, sash, glazed and unglazed, took the sixth-class rate of 58 cents from Chicago to Atlanta. About this time the manufacture of sash in the south had reached such proportions that the western manufacturers were rapidly being supplanted in the southern markets. The Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad participate but little in the transportation of glass from Pittsburgh, the bulk of which moves through the eastern gateways. These carriers, however, haul most of the western glazed sash, and, in order to enable the western manufacturers to compete in the south and thereby to secure for themselves a share of the traffic, they reduced the rate on glazed sash from Chicago to Atlanta from 58 to 40 cents, with a like reduction to other southern points. In August, 1905, there was a further reduction of 2 cents, resulting in the current 38-cent rate to Atlanta. The present sixth-class rate, Chicago to Atlanta, is 51 cents. Generally speaking, the carriers who transport glass from Pittsburgh to Atlanta do not haul glazed sash from Chicago to Atlanta. The 38-cent rate from Chicago, therefore, is the result of the independent endeavor of the carriers reaching the western factories to participate in a haul, which, because of market competition, could not be enjoyed at a higher rate. At the less-than-carload rate of 78 cents no western glazed sash is shipped to Atlanta, neither is there an appreciable amount shipped in carloads, the movement being almost entirely in mixed carloads with other building material. Glazed sash takes a lower rate, either class or commodity, than window glass, and the difference here existing in favor of glazed sash is not unusual. From St. Louis to Little Rock the rate on window glass is 30 cents and on glazed sash 23 cents; to Fort Smith, Ark., window glass 37 cents, glazed sash 20 cents; to Texas points, 45 cents on window glass and 29 cents on glazed sash, a uniformly higher rate on window glass than on glazed sash.

We pass, then, to a consideration of the reasonableness of the 56-cent rate on window glass from Pittsburgh to Atlanta, for the southern manufacturer is entitled to a reasonable rate on glass, regardless of any natural advantage he may enjoy in the manufacture of glazed sash.

The southern, official, and western classifications all rate window glass, carloads, fifth class, which from Pittsburgh to Atlanta is 60 cents. About 1902 the all-rail rate to Savannah was reduced in an effort to meet the water-line rate to that point, and this reduction produced combinations which were lower than the class rates from Pittsburgh to other points in Georgia. As a result commodity rates were established and that basis is still effective. The class rates in force July 1, 1901, and the present commodity rates are as follows:

	Albany.	Atlanta.	Augusta.	Columbus.	Macon.	Montgomery.	Rome.
	Cents.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
July 1, 1901	69	62	53	69	68	62	62
Current	64	56	49	57	58	57	56
Reduction	5	6	4	12	10	5	6

The rate on glass, therefore, is lower than on any of the following articles, which take fifth-class rates: Iron and steel, marble and granite, paint, steam radiators, asbestos, buckets, broom handles, furniture stock, glass battery jars, glass insulators, stoves and ranges, wire rope, etc. It is also lower than the commodity rate from Pittsburgh to Atlanta on polished sheet iron, 81 cents, but is higher than the rate on fruit jars, 53 cents. This latter commodity, however, must compete not only with fruit jars made in the south, but also with such other containers as tin cans, crockery jars, etc., while none of these competitive influences exist in the transportation of window glass. The 18-cent rate on glass from Pittsburgh to Chicago is the fifth-class rate between those points. To Atlanta the commodity rate is 6 cents lower than fifth class. In *Memphis Freight Bureau* v. *St. L. & S. F. R. R. Co.*, 21 I. C. C., 113, we found that a rate of 30 cents on rough ribbed glass from St. Louis to Memphis, 305 miles, was not unreasonable. This was the regular fifth-class rate, which applied also on window glass. At the same rate per ton per mile the charge from Pittsburgh to Atlanta would be 77 cents.

Under all the circumstances we are of the opinion and find that the rate of 56 cents per 100 pounds on window glass from Pittsburgh to Atlanta is not shown to be either unreasonable or unjustly discriminatory. The complaint will be dismissed, and it will be so ordered.

FOURTH SECTION APPLICATION NO. 960.

No. 4079.

GRAND JUNCTION CHAMBER OF COMMERCE
v.
DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Submitted March 2, 1912. Decided April 8, 1912.

The application of the Denver & Rio Grande Railroad Company and the Colorado Midland Railway Company for permission to charge higher rates at intermediate points than are contemporaneously in effect to more distant points on their lines, denied as to all westbound traffic originating at the Missouri River, the Mississippi River, Chicago, and similar rate territory.

C. L. Watson and *F. A. Jones* for complainant.

George A. H. Fraser, H. C. Bush, and *Henry T. Rogers* for Colorado Midland Railway Company.

J. G. McMurry and *E. N. Clark* for Denver & Rio Grande Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Chairman:*

Grand Junction, Colo., is located near the western boundary of that state upon the main line of the Denver & Rio Grande Railroad Company, 330 miles west of Pueblo and 291 miles east of Salt Lake City. The Denver & Rio Grande receives traffic from the east at various junction points, but wherever received the traffic passes through Pueblo on its way west.

The Colorado Midland Railway extends from Colorado Springs westward to a junction with the Denver & Rio Grande at Grand Junction. For some miles east of Grand Junction it uses the tracks of the Denver & Rio Grande under a trackage contract which is not material here. By arrangement with the Denver & Rio Grande it joins in through rates from eastern points of origin to Salt Lake City. Traffic between the east and Salt Lake City via the Colorado Midland passes through Grand Junction en route.

From the above statement it will be seen that with respect to all traffic originating east of Colorado common points and carried to Salt Lake City over the line of the Denver & Rio Grande or the Colorado Midland, Grand Junction is strictly an intermediate point.

The Grand Junction Chamber of Commerce complains that the Denver & Rio Grande and the Colorado Midland make, in conjunction with their eastern connections, rates from the Missouri River, the Mississippi River, and Chicago to Salt Lake City upon the various classes which are less than the corresponding rates to Grand Junction, and that thereby they violate the fourth section. The same allegation is made with respect to the transportation of household goods or emigrants' movables.

The complaint contains no charge that these rates to Grand Junction are excessive, but simply alleges that they are in violation of section 4, and the prayer of the complaint is that the defendants be required to cease and desist from this disregard of the statute.

Fourth Section Application 961 was filed by Poteet as agent for various lines, among others for the Denver & Rio Grande and the Colorado Midland. It embraced many lines of railway and a considerable number of rates. It called attention, among other things, to the fact that rates from the Missouri River, the Mississippi River, and Chicago upon the various classes were higher to Grand Junction and other intermediate points than to Salt Lake City, and asked to be allowed to continue this disregard of the fourth section.

This application embraced, in addition to the class rates and rates on emigrants' movables which were covered by the complaint of the Grand Junction Chamber of Commerce, many commodity rates from these same points of origin to the same destinations which were also in disregard of the fourth section, and also covered rates from other points of origin to these same representative points of destination.

It would appear from an examination of the Poteet application that some of the rates embraced would be affected by the fourth section orders already made in reference to transcontinental rates—Fourth Section Applications Nos. 295, 342, 343, 344, 349, 350, and 352, 21 I. C. C., 400.

Our orders in these cases are under injunction by the court, and to avoid any possible conflict between that injunction and the present proceeding attention here will be confined exclusively to rates between the Missouri River, the Mississippi River, and Chicago as points of origin, and Salt Lake City and intermediate points as points of destination. All rates and all intermediate points upon the Colorado Midland and the Denver & Rio Grande will, however, be considered.

As already said, the distance from Grand Junction to Salt Lake City is 291 miles, and it might well happen that even though it were held improper to impose a higher intermediate charge at Grand Junction a different conclusion would be reached as to points west of Grand Junction. It appears, however, that the Salt Lake rate, inarily known as the Utah common point rate, is applied to water, upon the main line of the Denver & Rio Grande, and all

stations between there and Salt Lake City. Since West Water is but 39 miles west of Grand Junction, and since no town of any considerable importance intervenes between the two, it is evident that the practical question reduces itself to, What shall be done in case of Grand Junction. If we hold that no higher rate shall be maintained at that point than is contemporaneously maintained to Salt Lake City, then we virtually deny the petition with respect to the traffic under consideration.

The complaint of the Grand Junction Chamber of Commerce was filed after the filing of the fourth section application, and both the Denver & Rio Grande and the Colorado Midland earnestly contended that no hearing could properly be had upon that complaint until this application had been disposed of; but the decision of this question is of no practical importance. Certainly the Grand Junction Chamber of Commerce as an interested party might properly be heard and should be heard upon the application of these carriers for leave to charge a higher rate at that intermediate point; and inasmuch as the complaint is based entirely upon the alleged violation of the fourth section, and inasmuch, further, as the rates involved in the fourth section application embrace all those mentioned in the complaint and many others, it will be sufficient to consider and dispose of the fourth section application alone.

In *Commercial Club, Traffic Bureau, of Salt Lake City, Utah,* v. *A., T. & S. F. Ry. Co.*, 19 I. C. C., 218, decided June 7, 1910, this Commission established a scale of class rates and many commodity rates between the Missouri River, St. Louis, and Chicago upon the east and Utah common points upon the west. These rates have been published and are now being maintained by the Denver & Rio Grande and the Colorado Midland. Those companies claim the right to maintain from the same eastern points of origin to Grand Junction higher rates than those established by the Commission to the more distant points, upon two grounds:

First. It is claimed that the distance by these lines is greater than by the direct line, and,

Second. That even if the distance were the same, the conditions of operation are more severe upon their lines, thereby increasing the cost of carriage.

These two claims will be examined in their order.

DISTANCE.

The rates established by the Commission apply to Utah common points and the parties do not agree as to what should be fairly selected as a representative point in estimating these distances. Without discussing the matter in detail, it may be said that in our opinion, considering its location and its commercial and traffic importance, Salt Lake City may properly be selected as that point.

[illegible] as to what point should be selected [illegible] The defendants insist that the direct line from [illegible] should be compared with the indirect line [illegible] Grand Junction to Salt Lake City. But [illegible] The rates established by us apply [illegible] these points should be taken [illegible] relative distance.

[illegible] Salt Lake City via the Union Pacific direct line [illegible] From Omaha to Grand Junction via the [illegible] Kansas City to Salt Lake City via Denver [illegible] is 1,2?4, while from Kansas City [illegible] is ?67 miles. It will be seen, [illegible] from these two points there [illegible] River to Salt Lake City via the [illegible] from the same points to Grand [illegible] miles.

[illegible] at the correct relative distance [illegible] accurate and from an examina- [illegible] the score of distance alone [illegible] higher rate at Grand Junction. If [illegible] from the Missouri River to Utah [illegible] class for 1,150 miles, it can not [illegible] that a higher rate would be reason- [illegible]

COST OF SERVICE.

R[illegible] that even though the distance to Grand J[illegible] operation upon their lines are so [illegible] the Union Pacific line that the higher [illegible]

The cost of [illegible] maintenance, and operation upon the Denver & Rio Grande has been very exhaustively gone into in evidence and upon the argument. It would not be profitable to attempt to restate the facts developed. It does conclusively appear that the cost of handling business, mile for mile, upon the Denver & Rio Grande exceeds that upon the Union Pacific very materially, this being due to the more favorable conditions of location, construction, and operation upon the Union Pacific.

But this additional cost of service only applies to a comparatively small part of the through haul, for up to Colorado points this business [illegible] by various lines at the same expense, whether it goes beyond [illegible] Union Pacific or the Denver & Rio Grande. The distance [illegible] to Grand Junction via the Denver & Rio Grande is 331 [illegible] ed with 546 miles from Cheyenne to Salt Lake City.

We are not satisfied that the additional cost of service over the lines of the Denver & Rio Grande and the Colorado Midland so far outweighs the additional distance to Salt Lake City that a higher rate could properly be established from these eastern points of origin to Grand Junction than we have established from the same points to Salt Lake City. If the charge to the more distant point has not been forced down by competitive conditions below what would be a reasonable charge to the intermediate point, then there is no justification for failure to observe the rule of the fourth section.

The complainants have assumed that in naming reasonable rates from the Missouri River to Utah common points in the *Salt Lake case* above referred to, this Commission considered simply the transportation service from Omaha to Ogden; but that is by no means the fact. Had we been naming rates based solely upon the cost of handling the business by the Union Pacific between Omaha and Ogden, we must upon any theory of rate making have established a much lower scale than we did. The rates named were from all Missouri River points and via all lines, including the Denver & Rio Grande and Colorado Midland, and while we did mainly consider the cost of handling the business via the Union Pacific lines from Colorado common points rather than via the lines of these complainants, and so stated, nevertheless we did not consider simply the short Union Pacific line but rather the average from all points via that line.

After giving careful consideration to the claims of the complainants and the evidence adduced in support of those claims, we are unable to find that the rates which we have found reasonable and established to Utah common points are unreasonably low to be maintained at Grand Junction. Nor can we find that there are any circumstances and conditions which fairly justify the maintenance of a higher level of rates from the Missouri River, the Mississippi River, or Chicago, to Grand Junction than is contemporaneously in effect to Salt Lake City and other Utah common points. The application covers commodity rates not established by the Commission in the *Salt Lake case*, and many of these rates have been called to our attention upon this proceeding, but nothing has been shown with respect to any one of these rates which would peculiarly except it from our general conclusion and the application of the complainants for leave to disregard the fourth section must therefore be denied.

Both the Denver & Rio Grande and the Colorado Midland insisted in this proceeding that they maintained no through rates from these eastern points of origin to Grand Junction, and therefore that the fourth section would not apply.

Rates to Grand Junction are constructed by combination upon Colorado common points; that is, a joint rate is named from the eastern point of origin up to the Colorado common point, to which

is added the rate of the Denver & Rio Grande or the Colorado Midland from the Colorado common point to Grand Junction. The claim of these companies is that their service in transporting this traffic from the Colorado common point to Grand Junction, being wholly within the state of Colorado, is a state transaction not subject to the act to regulate commerce.

This Commission has already held in *Baer Bros. Mercantile Co.* v. *M. P. Ry. Co.*, 17 I. C. C., 225, that a movement of this kind is interstate and that both the rate up to the Colorado common point and the rate from the Colorado common point are subject to its jurisdiction. That decision would unquestionably be adhered to in this proceeding were the matter in any way material, but apparently it is not. The applicants have filed this application to be relieved from the operation of the fourth section with respect to this traffic, and we must and do pass upon that application. If in fact the fourth section does not apply to this traffic, then our action goes for naught, since we make no affirmative order in the premises.

The application of the Denver & Rio Grande and the Colorado Midland for permission to charge higher rates at intermediate points than are contemporaneously in effect to more distant points will be denied as to all west-bound traffic originating at the Missouri River, the Mississippi River, and Chicago, and similar rate territory.

No. 4160.

NEBRASKA STATE RAILWAY COMMISSION

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Submitted March 6, 1912. Decided April 1, 1912.

In the application of rates on coal from the Walsenburg district of Colorado to numerous points in Nebraska, defendants provide a rate of $3.50 per net ton to one group of stations and a rate of $3.75 to a second group. The complainant, in substance, asks that certain points now taking the $3.75 rate be included within the $3.50 rate group, and that certain points taking the $3.50 rate be divided into two new groups to which shall apply rates of $3 and $3.25, respectively. The rates involved have been considered in other cases, cited in the report, and upon further consideration it is held:

1. That the defendants subject Minden "K" to undue and unreasonable prejudice in charging a higher rate than applies at Minden, and that for the future the rate to Minden "K" should not exceed the rate contemporaneously maintained to Minden.
2. That, under the readjustment required by this finding, the rate to Minden "K" should not be exceeded at the intermediate stations of Keene, Wilcox, Ragan, Huntley, Alma, Orleans, Carter, and Sacramento.

H. J. Winnett, H. T. Clarke, jr., W. J. Furse, and *T. J. Hall,* members of Nebraska State Railway Commission, for complainant.

R. B. Scott and *C. E. Spens* for Chicago, Burlington & Quincy Railroad Company.

E. E. Whitted for Colorado & Southern Railway Company.

E. N. Clark for Denver & Rio Grande Railroad Company.

J. E. Kelvy for defendants.

REPORT OF THE COMMISSION.

MEYER, *Commissioner:*

The complaint in this case, filed June 8, 1911, sets forth the grouping of certain coal mines in Colorado by the Denver & Rio Grande Railroad Company and the Colorado & Southern Railway Company. This grouping is in what is known as the Walsenburg or Walsens district, and includes, so far as rates are concerned, certain mines in the vicinity of Canon City and Florence. The rates from these mines to certain stations in Nebraska, all located along the lines of the Chicago, Burlington & Quincy Railroad Company, are alleged to be unjust, unreasonable, and unduly discriminatory, and certain lower rates to these points of destination are asked. The commodity is soft coal of all sizes, except slack and pea. Rates from the Trinidad

district are not directly involved: but as they take a fixed arbitrary above Walsenburg, apparently they would be affected by any change.

The answers of the defendants deny violations of the act and set forth that the subject matter presented by this complaint has been previously passed upon by the Commission, citing the cases of *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, 16 I. C. C., 387; *Colorado Coal Traffic Assn. v. C. & S. Ry. Co.*, 19 I. C. C., 478; and *Nebraska State Ry. Commission v. U. P. R. R. Co.*, 13 I. C. C., 349. The rates now the subject of complaint were established in adjustment with rates from mines in Wyoming to Nebraska destinations ordered by this Commission in the *Nebraska Commission case*, and were [illegible] in the *Cedar Hill case*, both cited above.

[illegible] tariffs of defendants show that stations on the Burlington [illegible] Nebraska are [illegible] grouped for the purposes of rate making. So far as the present complaint is concerned we need consider only the stations taking the rates of $3.50 and $3.75 per net ton from the Walsenburg district. The group to which the rate of $3.50 per ton applies as [illegible] tariffs now in force includes all points in Nebraska within the area bounded by the Colorado state line on the west; Sanborn, Culbertson, Oxford, Holdrege, Minden, Kenesaw, Hastings, and Aurora on the south and east; and Aurora, Grand Island, Kearney, and Venango on the north. The $3.75 rate group includes all stations in Nebraska east of the $3.50 rate group and south of the north bank of the Platte River, including on the north Stromsburg, Columbus, Schuyler, Fremont, and Omaha, as well as Council Bluffs and Pacific Junction, Iowa.

The complainant asks for a reduction in rates which would result in a regrouping of these stations and a realignment of rates as follows:

A rate of $3 from Sanborn to Stratton, inclusive, on the main line between Denver and Oxford and from Venango to Elsie, inclusive, on the Cheyenne branch.

A rate of $3.25 from Trenton to Oxford, inclusive, on the Denver line; from Culbertson to Imperial, inclusive, on the Imperial branch; and from Wallace to Farnham, inclusive, on the Cheyenne branch.

East of the latter group complainant proposes a rate of $3.50 to be applied as far as Superior, Edgar, Clay Center, and Harvard, along the north and south line between Superior and Edgar, and to all points south and west of Harvard and Superior, including Marion on the branch line from Orleans to St. Francis, Kans.

It will be seen from the foregoing statement of the rates now in eff[illegible] and the demands of the complainant that what is really in [illegible] this case is the propriety of the grouping of points of destina[illegible]nted by the defendants. Complainant does not attack the [illegible]aness of the rate of $3.50 per ton as applied to stations along [illegible]rom Oxford through Holdrege, Kenesaw, and Hastings to

Aurora, but insists that this rate should be extended further to the eastward and published to all stations west of a line running substantially south from Aurora through Harvard, Clay Center, Edgar, and Superior. Nor does the complainant object to the $3.50 rate as applied between stations from Eustis to Holdredge, inclusive.

The evidence introduced at the hearing may be divided into testimony respecting: The ton-mile revenue received for the through haul from the Walsenburg district to the various stations in Nebraska; the ton-mile revenue received on such hauls by the defendants out of their divisions of the joint through rates; the operating conditions along the lines serving the mines, and along the lines of the Burlington in the delivery of the coal at the various stations; and the competition experienced by various coal dealers located within the $3.75-per-ton zone in Nebraska nearest to the main line of the Burlington where the $3.50-per-ton rate is applied; also testimony on behalf of the Burlington road setting forth that prior to June 1, 1908, the rate to all the points in issue in this case from Walsenburg was $3.75 per net ton, but effective that date, in the adjustment of the Walsenburg rate with the order of the Commission in 13 I. C. C., 349, with respect to rates via the Union Pacific Railroad from Rock Springs and Hanna, Wyo., to Grand Island, Nebr., the Burlington road reduced the Walsenburg rate to Grand Island and Aurora to $3.50 per net ton and applied it to all intermediate stations on the main line southwestward from Aurora to the Colorado state line.

With respect to complainant's petition for a reduction of the rate of $3.50 per ton to $3 and $3.25 in the localities before described, the record contains no direct testimony other than computations of the ton-mile revenues received by defendants on the rates now in force. The bulk of the testimony was directed to the competition between dealers in coal at stations on both sides of and adjacent to the line separating the groups taking the rates of $3.50 and $3.75.

In reply to complainant's proposal that the present $3.50 rate group be extended eastward so as to include the points on the branch or side lines of the Burlington Company situated south and southwest of Aurora, that defendant urges that under this new grouping the same discriminations would be alleged as between adjacent towns along its main line and towns on branch lines adjacent thereto, and adds that whereas the only delivering carrier defendant in the present case is itself, in the *Cedar Hill Coal & Coke case, supra,* other and competing carriers whose revenues would be affected by an order granting the prayers of complainant in this case were also parties.

In submitting this case the complainant sets forth at some length the anomalous situation existing at Minden, a point taking the $3.50 rate, and Minden "K," a station to which the $3.75 rate applies. It

appears that the main line of the Burlington between Denver, Lincoln, and Omaha passes through Minden; that a subsidiary line, formerly known as the Kansas City & Omaha Railway, but now a part of the Burlington system, also passes through Minden, and has a station known as Minden "K," but there is no physical connection between these two lines, either at Minden or Minden "K," although they are stated to be only a few blocks apart. Testimony on behalf of the defendants shows that the $3.50 rate was applied at Minden June 1, 1908, because it is on the main line from the Walsenburg district to Grand Island, but that the rate was allowed to remain $3.75 at Minden "K" because Minden "K" could not be considered an intermediate station.

We do not believe the lack of switch connection between the lines of the Burlington system at Minden and Minden "K" should be allowed to prejudice the latter station, and while the testimony indicates that there are no coal dealers at Minden "K," that fact is fully accounted for in the rate applied at that place. Although the only industries adjacent to the tracks at Minden "K" are an elevator and a milling company, and the milling company now obtains its coal from what may be called eastern mines (probably Iowa or Missouri mines), no valid defense has been offered for the difference in rates at Minden and Minden "K." Additional mileage is no defense, for this is really a grouping relation, and Minden "K," as well as the stations south and west thereof, are well within the extreme mileage of the $3.50-rate group.

The brief of the complainant says:

Numerous complaints were made to the complainants in this case regarding the apparent discrimination in the rates on coal established and maintained by defendants from stations in Colorado to the stations of Minden and Minden "K" in Nebraska. A large number of coal dealers located at stations east of Oxford, other than stations on the main line of the Burlington, complained to us of their inability to do business in competition with nearby stations, where the rates on coal from the Walsenburg, Canon City, and Trinidad territories were 25 cents per ton less than to their stations. These complaints caused us to make an examination of rates on coal from the above-mentioned producing points in Colorado to stations in southwestern Nebraska. We were unable to find any good reason why the rates to the same station, i. e., Minden and Minden "K," should be 25 cents per ton higher to one point than to another point a few blocks distant, simply because the defendant, the Chicago, Burlington & Quincy Railroad Company, found it to their advantage not to connect the two lines of railroad at the above-mentioned station. This matter was presented to the Burlington officials, and they were asked to correct this discrimination, but they refused to make any change in their rate to Minden "K," giving as their reason that if they reduced their rates to Minden "K" they would have to reduce their rates to a number of points intermediate between Oxford junction and Minden "K." To our minds this reason did not appear sufficient to justify the discrimination at Minden, and as there was nothing further we could do, except to present the matter before your honorable Commission, as directed by the Nebraska statute, we decided to go into the entire question, and if possible present the coal-rate situation in this whole territory, so that a more equitable and reasonable adjustment of rates might be secured and thereby satisfy other complaints that had been made to us from stations other than Minden "K."

We agree with the complainant that, under the circumstances shown in this case, the maintenance of different rates on coal at Minden and at Minden "K" is indefensible. The present rate on coal from the Walsenburg district to Minden "K," as compared with the present rate to Minden, subjects the former locality to undue and unreasonable prejudice and disadvantage. We think that Minden "K" should take the same rate as Minden, and that such rate should be made applicable to all intermediate stations south and west of Minden "K," Wilcox, and Alma, excepting stations beyond Orleans, Nebr., on the branch line from Orleans to St. Francis, Kans. The stations affected include Minden "K," Keene, Wilcox, Ragan, Huntley, Alma, Orleans, Carter, and Sacramento, all of which are now on the same rate basis, and this relation should be maintained under the readjustment required by our order in this case.

There is nothing in the record to show with accuracy the population of these stations, or the coal tonnage received there, but from independent sources it appears that, omitting Minden "K," the total residents of the other eight stations will not exceed 3,000. The town of Minden has a population of about 1,600; of this number how many are in the immediate vicinity of Minden "K" does not clearly appear. The record is clear, however, that much of the coal from the Walsenburg district is used by threshing engines in the country surrounding these stations.

The present average earnings per ton-mile on coal from the Walsenburg district to stations adjoining the Colorado state line are 9.14 mills; if the rate should be reduced to $3 per ton, as requested by complainant, the average earnings would be 7.83 mills. In the groups where the complainant asks a reduction from $3.50 per ton to $3.25 the average earnings at present are 7.73 mills, and the average earnings under the proposed reduction would be 7.17 mills. The reduction in the group of stations now taking the rate of $3.75 per ton, if the rate were made $3.50 per ton, would be from a ton-mile revenue of 6.83 mills to 6.37 mills.

A careful analysis of the reports filed with the Commission by the defendants, the Chicago, Burlington & Quincy Railroad Company, the Colorado & Southern Railway Company, and the Denver & Rio Grande Railroad Company, shows that the operating expenses per ton-mile over these lines is so high that we hesitate to make changes in the rates now under investigation other than those before noted.

These ton-mile revenues appear to be high when taken by themselves or compared with ton-mile revenues of carriers transporting coal from important coal-producing districts in other parts of the United States. The revenue per ton per mile from the southern Illinois districts to Chicago is approximately one-half of what it is from the Colorado fields here in issue. But the revenue per ton-mile in itself

is not a sufficient basis for a judgment regarding the reasonableness of the rate which yields that revenue. Inquiry must be made regarding the expense incurred in doing the business. While we are without reliable figures representing the value of the property devoted to the public use by these respective carriers, and while operating statistics are not available in such detail as to make it possible to apply the most satisfactory statistical tests, the annual reports filed with the Commission provide sufficient information to enable us to determine with some degree of approximation the remunerativeness to the respondent carriers of the Colorado coal traffic. As illustrative of the character of the statistical tests which we have applied to the rates in controversy, we submit the following tables:

Results of operations as shown by income account.

1911.

	Denver & Rio Grande.	Chicago, Burlington, & Quincy.	Colorado & Southern.
Operating income	$6,546,813	$25,574,060	$2,668,022
Other income	1,297,965	2,174,699	1,071,355
Gross corporate income	7,844,778	27,748,768	3,739,377
Rents, etc	440,509	1,610,637	349,863
Interest on funded debt	4,922,136	8,626,369	2,098,246
Dividends	1,244,392	8,867,128	1,300,000
Miscellaneous deductions	123,150	667,999	6,086
Appropriations for improvements	....	4,826,755	....
Balance:			
Debit	....	....	14,806
Credit	1,114,501	3,149,880	....
Total deductions	7,844,778	27,748,768	3,739,377
Per cent on stock	[1] 2½	8	[1] 4 [2] 2

FOUR-YEAR AVERAGE, 1908 TO 1911, INCLUSIVE.

	Denver & Rio Grande.	Chicago, Burlington & Quincy.	Colorado & Southern.
Operating income (being operating revenues less operating expenses and taxes)	$6,462,122	$22,178,192	$2,607,990
Other income	1,077,098	1,760,217	1,080,365
Gross corporate income	7,539,220	23,938,409	3,688,355
Rents, etc	505,063	1,455,812	265,404
Interest on funded debt	4,035,089	8,026,097	1,889,556
Dividends from income	2,077,414	8,867,128	[4] 975,000
Miscellaneous deductions	128,272	823,584	40,273
Appropriations for improvements	148,159	3,394,814	....
Balance (credit)	645,223	1,370,975	528,122
Total deductions	7,539,220	23,938,409	3,688,355
Per cent on stock	[1] 2½ to 5	8	([3])

[1] On preferred stock.
[2] On common stock.
[3] ... 1910, and 1911 the dividends from income were 4 per cent on preferred and 2 per cent on common.
[4] ... dividend of 8 per cent on preferred stock, amounting to $680,000, was paid out of surplus, and is not ... the above table.

Results of operations as shown by income account—Continued.

COLORADO & SOUTHERN RAILWAY COMPANY.

	1908	1909	1910	1911
Tons carried	5,416,644	5,604,030	6,716,442	6,189,370
Average haul ....miles	106.99	112.17	123.21	122.90
Tons per loaded car	21.58	21.87	23.73	24.88
Tons per train	281.17	302.03	322.51	335.22
Per cent mineral	69.48	70.39	73.37	76.12
Operating expenses per ton-mile:				
Maximum ....mills	7.60	7.12	6.24	6.09
Minimum ....do	6.47	6.15	5.40	5.20
Operating expenses per ton for average haul given above:				
Maximum ....cents	81.3	79.9	76.9	74.9
Minimum ....do	69.3	69.0	66.6	63.9

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

	1908	1909	1910	1911
Tons carried	24,679,301	25,055,767	27,867,618	28,328,338
Average haul ....miles	267.62	264.24	266.80	251.20
Tons per loaded car	17.54	17.08	16.99	17.21
Tons per train	384.26	387.44	381.26	406.33
Per cent mineral	....	....	....	37.87
Operating expenses per ton-mile:				
Maximum ....mills	5.66	5.47	5.61	5.50
Minimum ....do	4.55	4.26	4.49	4.12
Operating expenses per ton for average haul given above:				
Maximum	$1.51	$1.45	$1.50	$1.38
Minimum	$1.22	$1.13	$1.20	$1.03

DENVER & RIO GRANDE RAILROAD COMPANY.

	1908	1909	1910	1911
Tons carried	9,251,380	10,714,331	12,943,086	13,162,823
Average haul ....miles	117.02	108.38	104.51	105.83
Tons per loaded car	19.86	19.46	20.46	20.30
Tons per train	239.40	241.92	258.85	258.59
Per cent mineral	82.36	83.67	84.29	84.24
Operating expenses per ton-mile:				
Maximum ....mills	8.49	9.04	8.58	8.44
Minimum ....do	6.49	7.52	7.06	7.03
Operating expenses per ton for average haul given above:				
Maximum ....cents	99.3	98.0	89.6	89.3
Minimum ....do	75.9	81.6	73.7	74.4

Without going into a discussion of the methods which were pursued in compiling these tables, attention may be called to the items in the last table designated by the terms "maximum" and "minimum." For each of the carriers it is probable that the operating expenses for the units indicated do not fall below the minimum given nor rise above the maximum. These figures are operating expenses simply, without allowance for capital charges. The amount to be added to operating expenses for capital charges, to arrive at a fair figure approximating a reasonable rate, varies with the special circumstances in each case, but would in this instance not be less than 50 nor more than 60 per cent. Applying these ratios to the ascertained expenses for the average haul of freight on each of the respondents' lines and reducing them to the basis of an average of 187 miles into Denver and 282 miles out of Denver, and making an allowance for the difference in the loading of coal as compared with other commodities, we arrive at figures which approximate the rates which are now being

charged. In other words, while the revenues per ton per mile derived by these carriers from the Colorado coal traffic are relatively high, the operating expenses are proportionately great and the general financial results from operation under present conditions are such that we are not justified in making any order which will seriously impair the revenues from coal traffic of these companies. The removal of the discrimination between Minden and Minden "K" will entail the loss of some revenue, but this is unavoidable in the elimination of the discrimination under existing circumstances.

Upon consideration of all the facts and circumstances shown in this case our conclusions are, and we therefore find, that the defendants' rate on coal from the Walsenburg district in Colorado to Minden "K," Nebr., $3.75 per net ton, subjects that locality to undue and unreasonable prejudice and disadvantage as compared with the rate of $3.50 per net ton applied by the defendants on the same commodity from the same points of origin to Minden; and that for the future the rate on coal from the Walsenburg district in Colorado to Minden "K" and the intermediate stations of Keene, Wilcox, Ragan, Huntley, Alma, Orleans, Carter, and Sacramento, Nebr., should not exceed the rate contemporaneously maintained on the same commodity from the same district to Minden.

An order in accordance herewith will be issued.

No. 4257.

MERCHANTS & MANUFACTURERS ASSOCIATION OF BALTIMORE, MD.,

v.

ATLANTIC CITY RAILROAD COMPANY ET AL.

Submitted March 14, 1912. Decided April 1, 1912.

Complainant alleged that the defendants subject Baltimore to undue prejudice in certain passenger excursion fares from Baltimore to Atlantic City, and give unreasonable preference to New York in similar fares from New York to Atlantic City; also that the fares from Baltimore are unreasonable. The evidence indicates that the lower fares from New York are forced by competition and that the volume of the traffic from New York is about six times that from Baltimore. There is also a difference in mileage in favor of New York, though this is not controlling. Upon consideration of all the facts, *Held:*

1. That the allegations of undue prejudice to Baltimore in these fares are not sustained.

2. That the excursion fares from Baltimore to Atlantic City are not shown to be unreasonable.

A. E. Beck for complainant.
Henry Wolf Biklé for Pennsylvania lines.
William L. Kinter for Philadelphia & Reading lines.
William C. Coleman for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

MEYER, *Commissioner:*

The complainant, which filed its petition July 20, 1911, is a corporation organized for the purpose of serving the interests of its members and of the residents of the city of Baltimore, Md. The defendants are common carriers forming through lines for the transportation of passengers between Baltimore and Atlantic City, N. J.

The substance of the complaint is that the round-trip fares between Baltimore and Atlantic City are unjust and unreasonable, and unduly prejudicial to Baltimore and its residents in comparison with the round-trip fares from New York City to Atlantic City. The maintenance by one of the defendants of a 6 months' round-trip fare of $5 from New York City to Atlantic City, while from Baltimore the round-trip fares charged by all of the defendants are $6 and $6.50 for 15-day trips and $6.75 and $7.25 for trips with a limit of 6 months, forms the basis for the charge of discrimination in favor of New York City and of prejudice to Baltimore; and is the main support of the allegation of unreasonableness.

The routes of passenger travel from Baltimore to Atlantic City are:

Via Pennsylvania system.

	Miles.
Baltimore, Md., Union station, to Philadelphia, Pa., Broad street station	96
Philadelphia, Pa., Market street wharf, to Atlantic City, N. J	60
Philadelphia, Pa., Broad street station, to Atlantic City, N. J	69
Baltimore to Atlantic City via Delaware River Ferry	156
Baltimore to Atlantic City via Delaware River Bridge	165

Via Baltimore & Ohio—Reading lines.

	Miles.
Baltimore, Md., Camden station, to Philadelphia, Pa., Twenty-fourth street station	96
Philadelphia, Pa., Chestnut street wharf, to Atlantic City, N. J	57
Baltimore, Md., to Atlantic City, N. J	153

The Pennsylvania Railroad Company is the only one of the defendants which, through its controlled lines also named as defendants, has passenger routes between New York City and Atlantic City as well as between Baltimore and Atlantic City. The Pennsylvania system also has the only all-rail route for passenger travel between Baltimore and Atlantic City, that by way of the Delaware River bridge; and due to this fact, perhaps, carries much the larger percentage of the total travel. The passenger route via the Baltimore & Ohio and Philadelphia & Reading lines is competitive with that via the Pennsylvania system, but obtains very little of the travel.

The round-trip tickets of both systems from Baltimore to Atlantic City sold for $6, good for 15 days, and for $6.75, good for 6 months are via the Delaware River ferries, and do not include transfers of passenger or baggage through Philadelphia; such further services are provided, when required, at additional tariff charges. The round trip tickets sold by the Pennsylvania system for $6.50, time limit 15 days, and for $7.25, time limit 6 months, are good via the Delaware River bridge, and carry the passenger and baggage via that route, no transfer through Philadelphia being necessary. Tickets sold by the Baltimore & Ohio—Reading route, at equal prices, $6.50 and $7.25, in order to compete as nearly as possible with the service furnished by

the Pennsylvania system, include transfers of passenger and baggage through Philadelphia between Twenty-fourth street station and the ferry wharf at the foot of Chestnut street, in both directions. The round-trip ticket sold by the Pennsylvania system for $5 between New York City and Atlantic City, good for 6 months, carries baggage via all routes of that system, except via the out-of-line haul from Broad street station to Market street wharf.

It follows from these facts that the only fare to Atlantic City from Baltimore which can be compared with the $5 fare from New York City is that of $7.25 good for six months, via the Delaware River bridge, for only these fares cover the same services, with respect to complete through transportation of passenger and baggage under the same time limit.

This $5 excursion fare of the Pennsylvania system from New York City to Atlantic City is made in competition with the similar fare inaugurated by the short line between those places as early as 1889. The Central Railroad of New Jersey, not a defendant, and the Atlantic City Railroad together form two short-line routes between New York City and Atlantic City. One route is by way of the Central Railroad of New Jersey ferry from New York to Jersey City, thence by rail to Winslow junction, and thence by Atlantic City Railroad to Atlantic City, a distance of 137 miles. The other route is by Sandy Hook steamer from New York City to Atlantic Highlands, N. J., thence by rail to Winslow junction, and thence to Atlantic City, a total distance of 129 miles. The route measuring 137 miles is the one usually traveled by passengers via the Central of New Jersey, and fixes the competitive distance between New York City and Atlantic City. Mileage tariffs of the Pennsylvania Railroad specify that distance between the latter places, although the short line of that system is from New York City to Trenton, N. J., thence via the east bank of the Delaware River to Morris junction, N. J., and thence via the West Jersey & Seashore Railroad to Atlantic City, a total distance of 144 miles.

The Pennsylvania Railroad Company, with its subsidiary companies, concurrently maintains these fares to Atlantic City, $5 from New York, and $7.25 from Baltimore, for what are apparently similar services, except for differences in distance. Does it thereby give undue or unreasonable preference or advantage to New York; or does it subject Baltimore to undue or unreasonable prejudice or disadvantage?

Atlantic City is a health and pleasure resort and originates little of this travel. It is the object, the occasion of it, but the travel starts from and returns to New York and Baltimore. The population of New York City is approximately 4,800,000. That of Baltimore 560,000, or a trifle less than one-eighth that of New York. From

New York City, during the year 1910, the number of round-trip tickets sold to Atlantic City via all lines amounted to nearly 100,000, whereas the total from Baltimore via all lines amounted to less than 17,000, or about one-sixth of the travel from New York. Of these totals the Pennsylvania system carried 82,180 passengers from and to New York and 16,072 from and to Baltimore. For the year December 1, 1910, to November 30, 1911, there are no statistics in the record to show the travel via other lines than those of the Pennsylvania system; but the increase via its lines is marked, more than 195,000 6-month excursion tickets from New York, and nearly 34,000 excursion tickets, week-end, 15-day, and 6-month, from Baltimore having been sold. The revenue per passenger mile via the usual route of travel from New York under this excursion rate is 1.74 cents; that from Baltimore, on the $7.25 fare via the bridge route, is 2.196 cents.

The record fairly shows that the circumstances and conditions affecting the travel and fares from New York to Atlantic City and from Baltimore to the same place differ. The differences are pronounced as to the competition between carriers and as to the densities of traffic from the two places. In 1910, New York travel averaged 274 persons for each day of the year as compared with an average of 46 persons per day from Baltimore, and in 1911 the averages were 540 per day from New York and 94 from Baltimore. The mileages of the usual routes are also less from New York, that over the Pennsylvania being 144 and over the Central of New Jersey 137 miles; whereas the distance from Baltimore via the bridge is 165, a difference in the round trips of 42 miles via the Pennsylvania and of 56 miles via the Central of New Jersey.

From the evidence before us we can not find that the maintenance by the Pennsylvania Railroad and its subsidiary lines of the excursion fare of $5 from New York City to Atlantic City constitutes an undue or unreasonable preference to the city of New York; nor that the concurrent maintenance of a similar excursion fare from Baltimore of $7.25 subjects the latter locality to undue or unreasonable prejudice. Bearing upon this conclusion, the fact should be kept in view that during the season of greatest travel in each year, from June 16 to September 16, Baltimore has a $5 week-end excursion fare to Atlantic City, good for 5 days, via all routes and including free transfers of passenger and baggage through Philadelphia with the exception that if a passenger via the Pennsylvania system desires to have his baggage transferred from the Broad street station to the Market street wharf additional charges will be made.

There remains the question whether these excursion fares from ltimore to Atlantic City are unreasonable or excessive.

It is to be noted that complainant specifies as unreasonable only the 15-day and 6-month excursion fares between Baltimore and Atlantic City. The single fare and the week-end excursion fare are not mentioned in the complaint. Prior to 1896, when the Delaware River bridge, used in this travel exclusively by the Pennsylvania system, was opened for traffic, all travel between Baltimore and Atlantic City involved a break in the trip between the rail terminals in Philadelphia and the wharves of the Delaware River ferries.

In tracing the history of these fares it will be sufficient to follow them via the Pennsylvania system. In 1889, a 10-day fare was published at $5.50, and during 1889, 1890, and 1891, season tickets were sold for $6, from June 1 until September 30, final limit October 31. From 1892 to 1895, inclusive, the excursion fare was $6, limit 6 months from date of sale, on sale throughout the year. The fares from 1896 to January 1, 1912, were as follows:

Excursion fares between Baltimore and Atlantic City.

Date.	Via Market street wharf.			Via Delaware River bridge.		
	Week-end.	Fifteen-day.	Six-month.	Week-end.	Fifteen-day.	Six-month.
1896			$6.00			$6.50
1897			6.00			6.50
1898			6.00			6.50
1899			6.00			6.50
1900			6.00			6.50
1901	$5.00		6.00			6.50
1902, Jan. 1, to May 31	5.00		6.00			6.50
1902, June 1	5.00		6.00			6.50
1903	5.00		6.00	$5.00		6.50
1904	5.00		6.00	5.00		6.50
1905	5.00		6.00	5.00		6.50
1906, Jan. 1, to May 31	5.00		6.00	5.00		6.50
1906, June 1	5.00	$5.75	6.50	5.00	$6.25	7.00
1907	5.00	5.75	6.50	5.00	6.25	7.00
1908	5.00	5.75	6.50	5.00	6.25	7.00
1909	5.00	5.75	6.50	5.00	6.25	7.00
1910	5.00	5.75	6.50	5.00	6.25	7.00
1910, effective May 1	5.00	6.00	6.75	5.00	6.50	7.25
1911	5.00	6.00	6.75	5.00	6.50	7.25

It will be seen that from the time the Delaware River bridge was opened for traffic, in the spring of 1896, until June 1, 1906, the rates were: $6 for the 6 months' trip by way of the Market street wharf and $6.50 for the 6 months' trip by way of the Delaware River bridge. The difference in the charge by way of the bridge is said to be occasioned by what is called the bridge toll of 25 cents each way, the actual additional haul being about 9 miles each way; but this additional charge of 50 cents is more apparent than real, for if the passenger has baggage it goes free via the bridge route, whereas there are charges for its transfer from the Broad street station through Philadelphia to the wharf. The bridge, with its approaches, cost about $2,680,000.

Beginning June 1, 1906, these 6 months' excursion fares between Baltimore and Atlantic City were increased 50 cents each and a 15-day fare was established. This additional fare, via the Market street wharf, was based on the round-trip fare from Baltimore to Philadelphia, $4, plus the round-trip fare from Market street wharf to Atlantic City, $1.75, or $5.75; while via the Delaware River bridge it equaled the sum of the round-trip fare between Baltimore and Philadelphia, $4, and the round-trip fare via the bridge route from Philadelphia to Atlantic City, $2.25, or $6.25. The increase of 50 cents in the price of the 6 months' tickets made the spread between the cost of the 15-day trip and the 6 months' trip 75 cents. This relationship of the fares has been maintained, although on May 1, 1910, an increase of 25 cents was made in both the 15-day and 6 months' excursions. This increase of 25 cents followed an increase in the excursion fares from Philadelphia to Atlantic City which had become effective two years prior thereto.

The defendants justify the extra charge of 75 cents for the 6 months' excursion ticket over the 15-day trip by the additional service thereby extended. This practice, or a similar one, appears to be general, and there was nothing shown in this record upon which its reasonableness can be determined.

Upon the record before us we are unable to say that the excursion fares put in issue in this case are excessive or unreasonable. The complaint will be dismissed.

No. 4001.

CLYDE COAL COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted March 14, 1912. Decided April 1, 1912.

Present rate on coal from Clyde siding, Fredericktown, Pa., to Ashtabula Harbor, Ohio, when for transshipment by vessel on the great lakes to points beyond, found to be unreasonable to the extent that it exceeds 78 cents per net ton, which is the rate ordered by the Commission, in *Boileau* v. *P. & L. E. R. R. Co.*, 22 I. C. C., 640, to be established from the Pittsburgh district to Ashtabula Harbor. The southern boundary of the Pittsburgh district is changed to include complainant's mine.

Wade H. Ellis, *Challen B. Ellis*, and *J. W. Magee* for complainant.

A. P. Burgwin for Pennsylvania Railroad Company and Pennsylvania Company.

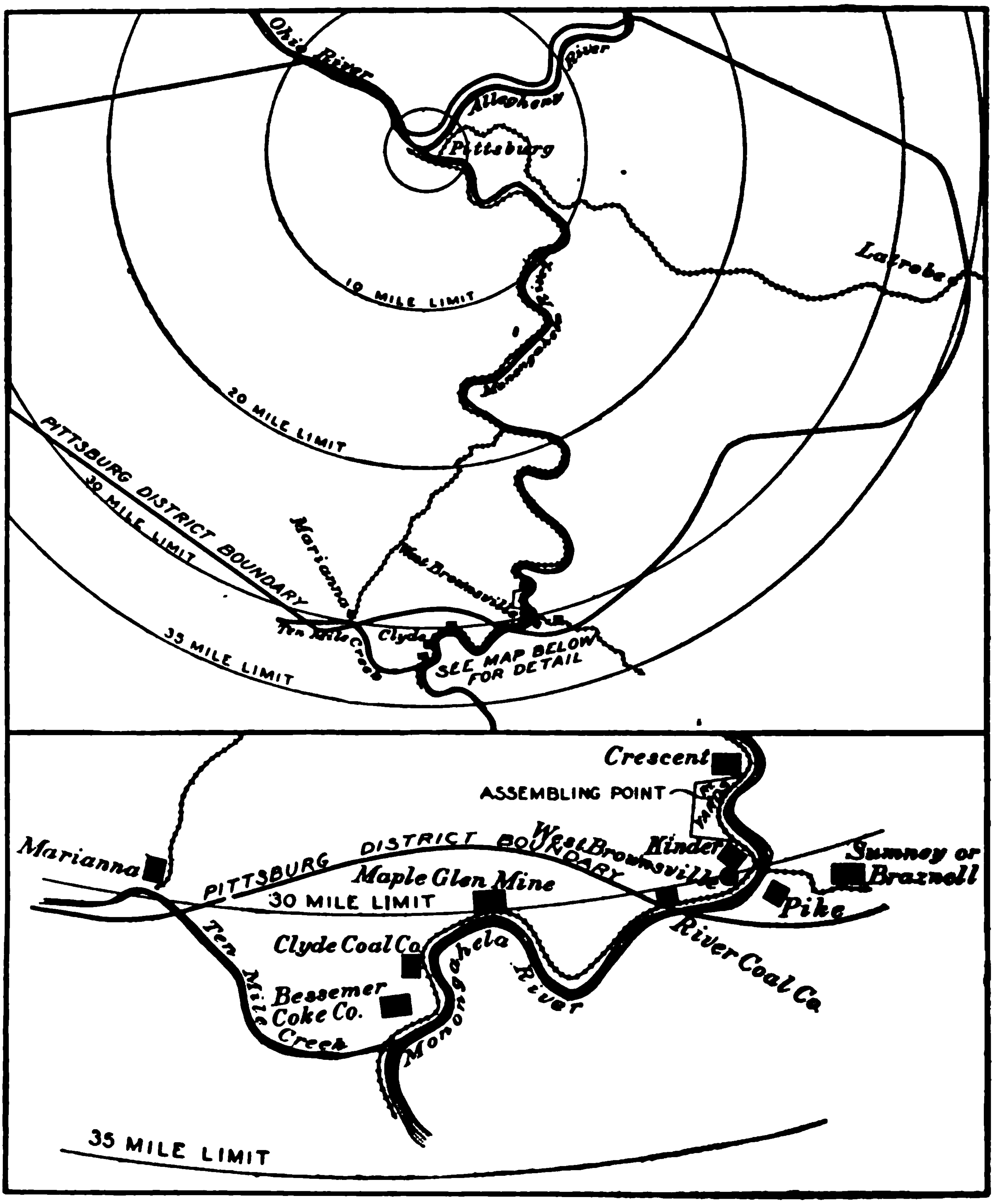
Report of the Commission.

Meyer, *Commissioner:*

The complainant is a corporation engaged in the business of producing and selling coal, with mines near Fredericktown, Washington county, Pa., on the line of the Pennsylvania Railroad Company and the Monongahela division thereof. By this proceeding, petition in which was filed April 6, 1911, complainant seeks the establishment of a carload rate on coal from its shipping point, Clyde siding, Pa., to Ashtabula Harbor, Ohio, when for transshipment by vessel on the great lakes to points beyond, "slightly above that which shall be fixed for the Pittsburgh district in the case now pending before this Commission, *Boileau* v. *P. & L. E.*, Docket No. 3853." The decision of the Commission in the latter case was rendered on March 11, 1912, 22 I. C. C., 640. We therein ordered the reduction of the Pittsburgh district-to-Ashtabula lake-cargo coal rate from 88 cents to 78 cents per net ton, and complainant's prayer in this case will therefore be considered with relation to the rate of 78 cents.

The defendants are the Pennsylvania lines, which form a through route from Clyde siding to Ashtabula Harbor, and other ports on

Lake Erie. Clyde siding is now given the rate in force from the Fairmont district of West Virginia (96¾ cents per net ton). Complainant alleges that such rate, as applied from Clyde siding, is unreasonable and unjust, and constitutes an undue preference and advantage to the shippers of other localities and subjects it to undue prejudice and disadvantage, all in violation of the act to regulate commerce.



The accompanying map, which follows as accurately as possible the large blue-print drawing submitted by defendants' assistant freight traffic manager, shows the proximity of the Clyde mine to nearby points in the Pittsburgh district. Across the Monongahela River on the east is the boundary of the Connellsville district, which takes the same rate as the Fairmont district. Counsel for the car-

riers contends that (1) "to place the Clyde mine in the Pittsburgh district would be unfair to operators in the Connellsville district, immediately adjoining across the river on the east, and would necessarily work a disruption of rates throughout that entire district, as well as in the Fairmont district on the south;" also that (2) "it is plainly impracticable that it should have a special rate of its own," but at the same time counsel admits that (3) "the carrier is bound to accord reasonable rates to any desired market. It can not attempt to dictate where that market shall be." It follows, therefore, from the position taken by defendants that contentions 1 and 2 must fall if a reasonable maximum rate to the lake coal market is found to be a slight differential over the Pittsburgh district rate or such rate itself.

The before-noted map submitted by defendants shows that the Pittsburgh district along its south and southeast boundary includes all mines within a radius of 30 miles from Pittsburgh proper, except the Maple Glen, while within the 35-mile limit it takes in the Latrobe, Sumney or Braznell, Pike, and River Coal Company mines, but misses the Clyde. The boundary line, after bringing in the mines within the 35-mile radius, dips sharply inside the 30-mile radius toward the center of the district, excludes the Maple Glen and Clyde, which are only 2.1 miles apart, and then resumes its normal curve outside that radius at the Marianna mine. The testimony of the general manager of the Clyde Coal Company is that "mostly all of Washington county is in the Pittsburgh district. The only part I know of that is not is a little 8-mile stretch running south from Brownsville to Ten Mile Creek, which includes our property. * * * Naturally and geologically and every other way except from this railroad rate radius we are in the Pittsburgh. Nobody ever disputed that fact that I heard of." Considering its geographical location, it is apparent that Clyde siding might be reasonably included within the Pittsburgh rate district.

Following is a comparison given by defendants of the distances to Ashtabula from Clyde siding and near-by mines within the district:

Distances to Ashtabula Harbor.

From—	Miles.
Clyde	188.8
Braznell or Sumney	182.5
Pike	182.8
River Mine	183.5
Marianna	179.0
Kinder	179.9

and of these points are on defendants' lines, and the record does not disclose any dissimilarity of circumstances and conditions surrounding the movement from Clyde as compared with the other mines, except the slightly additional haul, that would justify any difference in the charge for transportation. The movement of lake coal from Clyde is down grade over defendants' line to Pittsburgh. This line parallels the Monongahela River and originates a large share of the lake-cargo tonnage from the Pittsburgh district. West Brownsville, [illegible] miles from Clyde, is one of the assembling points in the Pittsburgh district for lake coal. There the Clyde coal would join the lake coal from points on the same line within that district.

There is no evidence that traffic from the Clyde mine to the lake would move through any part of the Connellsville district. The Monongahela River forms a natural barrier between the two, and the record does not show that any Connellsville coal is shipped as lake coal. The Connellsville district is known as a coking region, and its coal is generally made into coke, while complainant's coal is of such quality that it can not be so used. It is steam coal of a grade that would be available for the lake trade. A wide area of undeveloped coal lands, probably [illegible] miles across, separates the Clyde property from the Fairmont district proper, and there is no railroad connecting the two localities. From the facts before us in this proceeding the conclusion is inevitable that the Clyde mine can not be consistently included within the Fairmont-Connellsville rate group.

Does the slightly additional haul from the Clyde mine over the haul from the adjacent mines in the Pittsburgh district warrant a higher rate from Clyde than from those mines? In forming the Pittsburgh district the carriers have followed no hard and fast rule, they have taken in mines more distant from Pittsburgh than the Clyde, and the contour of the district has been materially changed so as to include certain mines and exclude others. All grouping for rate purposes is necessarily more or less arbitrary. Group lines generally have the appearance of injustice to some point just across the line. Yet the line must be drawn somewhere or the grouping abandoned. Once established, groups should not be lightly or unnecessarily disturbed. However, that part of the boundary line of the Pittsburgh group here in issue suggests an unusual arbitrariness or grotesqueness for which the mind instinctively seeks an explanation and justification which nothing in the present record seems to

l.

do [illegible] t think the defendants have justified the eccentric move-
of [illegible] Pittsburgh district boundary line where it sidesteps
[illegible] t's shipping point. We believe that the location of the
[illegible] west of the Monongahela River, north of Ten Mile Creek
[illegible] se to the 30-mile radius from Pittsburgh, its accessibility

to one of defendants' assembling points for lake-cargo coal, and the other facts before noted, all combine to show that it properly belongs within the Pittsburgh district and is entitled to the rate of 78 cents ordered by the Commission to become effective from such district. From a consideration of the facts which we feel should be borne in mind in determining whether a particular point should be accorded the same rate as other points in the same vicinity, we must conclude that the defendants were without justification in not according the Pittsburgh rate to the Clyde mine.

We are of the opinion and so find that defendants' rate on coal from Clyde siding, Fredericktown, Pa., to Ashtabula Harbor, Ohio, when for transshipment by vessel on the great lakes to points beyond, is unreasonable to the extent that it exceeds 78 cents per net ton, which rate the defendants will be required to maintain for the future.

An order in accordance herewith will be issued.

No. 4375.

CHAMBER OF COMMERCE OF ASHBURN, GA., ET AL.

v.

GEORGIA SOUTHERN & FLORIDA RAILWAY COMPANY ET AL.

Submitted March 16, 1912. Decided April 2, 1912.

Adjustment of rates to Ashburn, Ga., found to be unjustly discriminatory to Ashburn and unduly preferential to Tifton, Ga.

William A. Wimbish for complainants.

Merrel P. Callaway for Georgia Southern & Florida Railway Company; Atlantic Coast Line Railroad Company; Seaboard Air Line Railway Company; Central of Georgia Railway Company; Southern Railway Company; Illinois Central Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Nashville, Chattanooga & St. Louis Railway Company; Ocean Steamship Company; and Old Dominion Steamship Company.

William A. Northcutt for Louisville & Nashville Railroad Company.

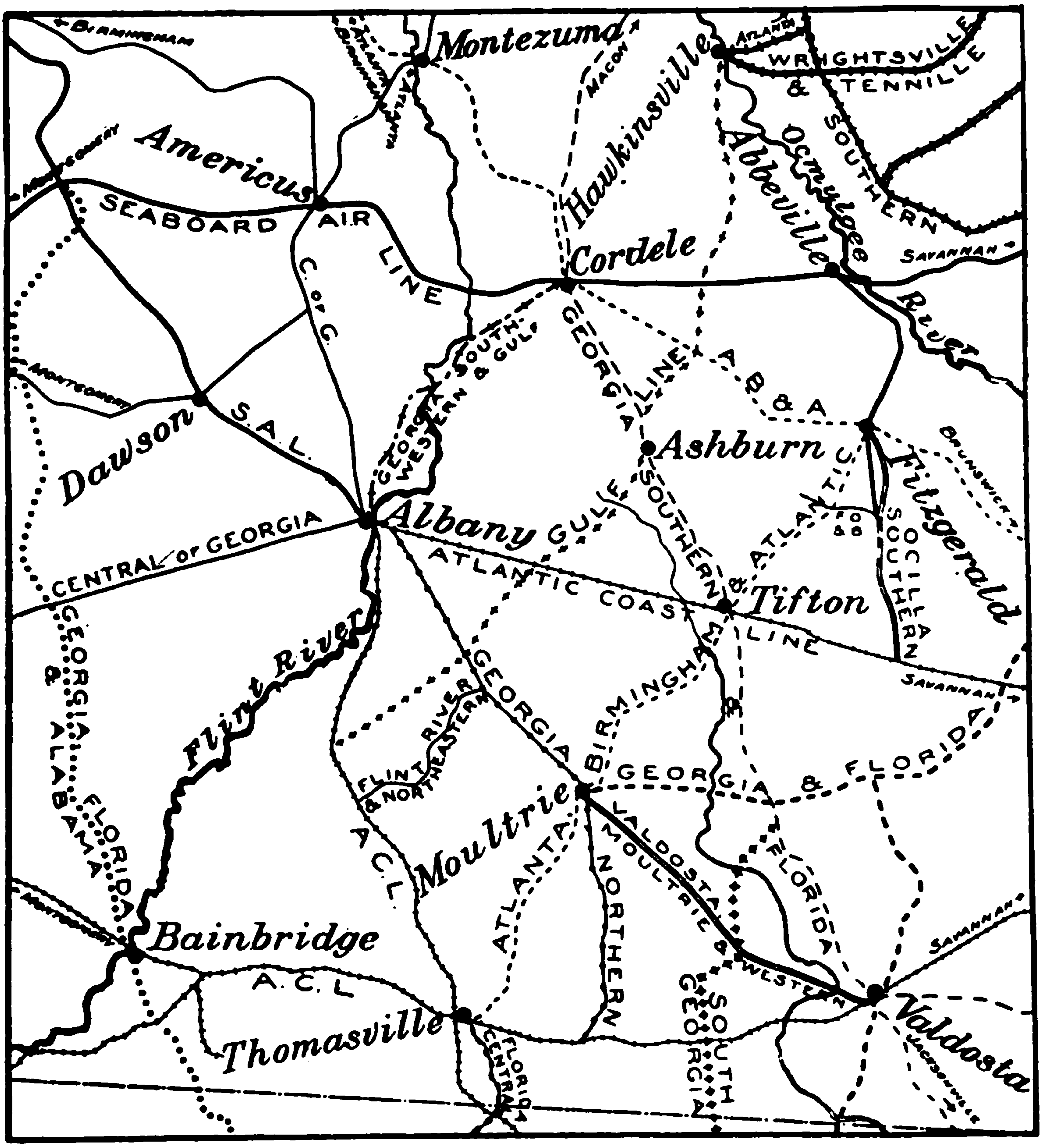
REPORT OF THE COMMISSION.

CLARK, *Commissioner:*

This complaint, brought by the Chamber of Commerce of Ashburn, Ga., et al., alleges that the rates to and from eastern cities, Ohio and Mississippi River crossings, Gulf ports, and the west, on both classes and commodities are unreasonable and unjustly discriminatory against complainants and Ashburn and unduly prefer Cordele, Tifton, Fitzgerald, Albany, and other south Georgia points.

The accompanying sketch indicates the situation more clearly than it could be stated in words. It will be noted that Ashburn is located about the center of an irregular square, the corners of which are occupied by Cordele, Albany, Tifton, and Fitzgerald. Ashburn is on the main line of the Georgia Southern & Florida Railway, some 85 miles south of Macon, Ga., and 177 miles northwest of Jacksonville,

Some minor errors as to the rate adjustment and as to rates appear in the record and the briefs. As stated herein, they are taken from the tariffs on file with us and, unless otherwise noted, are in cents per 100 pounds. The class rates from New York, as representative of the eastern cities, to Cordele, Albany, Tifton, Fitzgerald, and Ashburn, are as follows:



FROM NEW YORK

To Cordele, Albany, Fitzgerald, and Tifton—

Classes....	1	2	3	4	5	6	A	B	C	D	E	F
Rates.....	117	103	92	76	62	49	41	53	45	44	64	88

To Ashburn—

Rates.....	142	126	112	94	75	59	54	54	41	38	79	74

The class rates from the Ohio River crossings are as follows:

FROM CINCINNATI, LOUISVILLE, EVANSVILLE, AND CAIRO

To Cordele and Albany—

Classes	1	2	3	4	5	6	A	B	C	D	E	F
Rates	123	107	96	78	65	52	37	42	33	29	60	58

To Fitzgerald and Tifton—

Rates	143	124	110	90	74	59	44	45	35	31	70	62

To Ashburn—

Rates	148	130	116	96	80	64	49	53	40	35	75	72

From the Mississippi River crossings, St. Louis, and Memphis, the class rates are as follows:

FROM ST. LOUIS

To Cordele and Albany—

Classes	1	2	3	4	5	6	A	B	C	D	E	F
Rates	146	126	113	90	75	60	44	50	40	34	68	72

To Fitzgerald and Tifton—

Rates	166	143	127	102	84	67	51	53	42	36	78	76

To Ashburn—

Rates	171	149	133	108	90	72	56	61	47	40	83	86

FROM MEMPHIS

To Cordele and Albany—

Rates	119	103	92	74	61	48	33	38	29	25	56	50

To Fitzgerald and Tifton—

Rates	139	120	106	86	70	55	40	41	31	27	66	54

To Ashburn—

Rates	144	126	112	92	76	60	45	49	36	31	71	64

The rates from north of the Ohio River and from west of the Mississippi River are made in combination on the Ohio and Mississippi River crossings.

From the Ohio River crossings, the Mississippi River crossings, and numerous points in the south the rates to Ashburn are made by the use of certain specified arbitraries which are added to the rates up to the base points, and the lowest combination so arrived at applies whichever route the shipment moves. These arbitraries as to the class rates are as follows:

Classes	1	2	3	4	5	6	A	B	C	D	E	F
Cordele	25	23	20	18	15	13	13	11	7	6	15	14
Jacksonville	81	70	60	48	39	33	32	29	15	14		31
Macon	51	46	40	36	28	21	21	19	11	10		[illegible]

The tariff publication which contains the specific joint rates to the base points and the arbitraries and authority for their use are issued by a joint agent for defendants and other carriers. The rates to Ashburn are therefore joint through rates.

It will be seen that from the eastern cities the rates to Cordele and Tifton are the same and are lower than to Ashburn, as a result of which traffic moves through Tifton and Ashburn to Cordele or through Cordele and Ashburn to Tifton at lower rates than apply at Ashburn.

In the application of rates from the Ohio and Mississippi River crossings the so-called basing points in southern Georgia are divided into two groups. Cordele, Albany, Americus, and Dawson are included in group A and take the same rates; Tifton, Fitzgerald, Moultrie, Valdosta, Thomasville, and Bainbridge are in group B and take the same rates.

Ashburn is 20 miles north of Tifton, 36 miles west of Fitzgerald, 20 miles south of Cordele, and 37 miles east of Albany, by rail. The Gulf Line Railway extends from Hawkinsville, where it connects with the Southern Railway, through Ashburn to Bridgeboro, where it connects with the Georgia Northern Railway. It crosses the Seaboard Air Line at Pitts, the Atlanta, Birmingham & Atlantic at Double Run, the Georgia Southern & Florida at Ashburn, and the Atlantic Coast Line at Sylvester. Ashburn is but 6 miles more distant from Savannah than is Cordele or Tifton, and is not more than 20 miles farther than Cordele or Tifton from such important points and gateways as Atlanta, Birmingham, Montgomery, Savannah, Brunswick, and Jacksonville.

Ashburn is the county seat of Turner county and has a population of something over 2,200—practically the same as Tifton. It is a thriving, growing place, in a section of fertile land from which timber has been or is being removed. It has no wholesale or jobbing business because under existing rate adjustments dealers at Cordele can bring in goods from the east or the west and pay the local rates to Ashburn at the same freight cost that the Ashburn merchants would have to pay on through shipments.

The class rates to Ashburn from the Ohio River crossings are higher than to Cordele and Tifton, as follows:

Classes	1	2	3	4	5	6	A	B	C	D	E	F
Cordele	25	23	20	18	15	12	12	11	7	6	15	14
Tifton	5	6	6	6	6	5	5	8	5	4	5	10

It will be seen that on first-class traffic from the east for the additional haul of 20 miles to Ashburn the extra charge is $5 per ton. From Cincinnati to Cordele the distance is 726 miles, and on grain the rate is 29 cents per 100 pounds, or 8 mills per ton per mile. For the additional haul of 20 miles to Ashburn the additional charge is 6 cents per 100 pounds, or 6 cents per ton per mile. To Tifton, 20

now part of the Atlantic Coast Line, and the latter a part of the Atlanta, Birmingham & Atlantic. The carriers maintained lower rates to Valdosta than to Tifton, the distance and service to and at these points being substantially the same. In 1902 the Commission found this to be unjust discrimination and directed that it be removed. *Mayor & Council of Tifton v. L. & N. R. R. Co.*, 9 I. C. C., 160. Thereupon, say defendants, the Atlantic Coast Line established lower rates to Tifton. The record shows, however, that defendant Georgia Southern & Florida Railway was also a defendant in that proceeding, and it therefore was a party to the original establishment of the lower rates at Tifton, as it also serves Valdosta.

Defendants argue that Tifton and Cordele are more important railroad centers than is Ashburn and that they are served by carriers that operate a large mileage of interstate track and that Ashburn is simply a local point on the Georgia Southern & Florida. Ashburn is now no more a local point than was Tifton or Cordele when the lower rates were accorded to them. Defendants say that Ashburn is accorded the benefit of its proximity to the basing points which enjoy the lower rates, being given the lowest combination on those basing points. As to the rates here in issue, however, the full local is frequently added for a slight additional service on the end of a long interstate haul.

Defendants say that the rates to Ashburn have been materially reduced since 1894, but inasmuch as the best adjustment Ashburn has ever had has been the lowest combination on a basing point, it is obvious that the only benefit which Ashburn has received from reductions in rates is a reflection of reductions in rates to the basing point.

Defendants argue that the Gulf Line depresses its rates at Ashburn to meet the lower rates of the Georgia Southern & Florida and that the local rates to points east and south of Ashburn are higher than those to Ashburn, and that this evidences the reasonableness of the rates to Ashburn; that is, the Gulf Line and its connections depress the rates to Ashburn to meet the rates of the Georgia Southern & Florida and its connections, and the Georgia Southern & Florida and its connections depress the rates to A[illegible]t the rates of the Gulf Line and its connectio[illegible]ions of both the Georgia Southern & Florid[illegible]rally the same carriers and they are t[illegible]tory.

Defendants assert [illegible]nd Tifton are geographically situ[illegible] business can be carried on at [illegible] is so situated that it can reach [illegible] same is true as to Fitzgerald, [illegible]out 20 miles

It appears that business interests at Americus in 1887 projected a railroad from Americus to a point on the Ocmulgee River, and established, in connection with boat lines through Brunswick and the river, through rates to Americus. This line passed through Cordele. It is testified that on account of the demands of western markets through the lines handling the western traffic, rates from the west to Americus were reduced to substantially the rates then prevailing to Albany. In 1895, on complaint, this Commission ordered that rates from Nashville on grain and grain products be made not higher to Cordele than to Americus, Cordele being as to most of this traffic directly intermediate. *Hill & Bro.* v. *N., C. & St. L.*, 6 I. C. C., 343. Thereupon the carriers extended to Cordele from all Ohio River crossings and western points the same rates that applied to Americus.

Defendants say that competition of the eastern markets served by the rail lines and the rail-and-water lines through the South Atlantic ports "forced" similar reductions to Cordele from the east. They show that the competition of western and eastern dealers is very keen and that if by reason of reductions in rates from the east the western dealers are shut out of the market it is the business of the western lines to put them back in the market if they can, and vice versa. Except for the explanation that the rates to the several basing points as to which undue preference is here charged have been depressed by competition of carriers or by this market competition, and the argument that the lines whose rails reach Ashburn do not control that competition, there seems to be no claim that this market competition is not as keen now as it ever has been, and no substantial reason advanced why Ashburn is not as much entitled to benefit from it as the points which are accorded that benefit.

One of defendants' witnesses testified that the Gulf Line is solely an intrastate line, makes no rates, and does not figure in any combination of rates from the west to Ashburn. However, he also said that if the Gulf Line with its connections should put in lower rates than now exist to Ashburn, the Georgia Southern & Florida might or might not meet them. The Georgia Southern & Florida could make rates to Ashburn from the port of Jacksonville without concurrence of any other rail line, but as has been noted neither it nor others of the smaller roads can control these rate adjustments without the cooperation of their connections, and likewise the larger systems or trunk line roads are and would be unable to reach many points of origin and destination except in cooperation with the smaller lines.

The rate adjustments at Tifton and Fitzgerald are said to have been brought about in part at least by small roads, originally the Brunswick and Western, and the Tifton & Northeastern. The former is

now part of the Atlantic Coast Line, and the latter a part of the Atlanta, Birmingham & Atlantic. The carriers maintained lower rates to Valdosta than to Tifton, the distance and service to and at these points being substantially the same. In 1902 the Commission found this to be unjust discrimination and directed that it be removed. *Mayor & Council of Tifton* v. *L. & N. R. R. Co.*, 9 I. C. C., 160. Thereupon, say defendants, the Atlantic Coast Line established lower rates to Tifton. The record shows, however, that defendant Georgia Southern & Florida Railway was also a defendant in that proceeding, and it therefore was a party to the original establishment of the lower rates at Tifton, as it also serves Valdosta.

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Defendants assert that Fitzgerald, Albany, Cordele, and Tifton are geographically situated so that a wholesale or jobbing business can be carried on at these points. They say that Cordele is so situated that it can reach out from 25 to 35 miles and that the same is true as to Fitzgerald. The reason why Cordele can reach out 20 miles

toward Ashburn has already been noted. It is stated that the conditions at Albany are more favorable and that a greater territory can be reached therefrom because not only of greater railroad facilities but of greater distance from competitive distributing points, but that Ashburn being located halfway between Cordele and Tifton could reach only halfway between those points if it had the same rates as Cordele on one side and Tifton on the other, and that therefore there would be practically no increase in the tonnage of merchandise moved into Ashburn. The record does not disclose the amount of business that Ashburn could do in that radius if it had an equitable rate adjustment, but we are not prepared to say that because it would be comparatively small, Ashburn may be wholly excluded from opportunity to get what it can.

The basing-point system in the southeast is not here brought in issue except to point out the discrimination alleged against Ashburn. It has grown up with the development of that country, having its origin doubtless in competition of rail lines with water carriers. But many such basing points are not so located as to make it at all apparent that water competition controlled the adjustment. One of defendants' witnesses testified that the Central of Georgia Railway line into Albany was constructed in 1857 and that no special or depressed rates were established there until at a later period the Brunswick & Western Railroad constructed its line to Albany, and that he had heard it stated that the latter line put in low rates to Albany to meet the competition of boat lines on the river. The competition on the river did not induce the Central of Georgia to reduce its rates until a competing railroad built in there and made reductions, whereupon the Central of Georgia and its connections met the reduced rates. Defendants say that the rate fabric of the southeast is a result of competition and contest among transportation lines from the markets of supply, which have been aggressive from the time that railroads were first built into that section from the east and from the west.

The development of traffic and transportation conditions from the outside world to points in Georgia has brought about a rate adjustment under which the rates to a large portion of the state are based and dependent upon the rates to Atlanta. As the rates to Atlanta change, the rates to other places, including Albany, Cordele, and Tifton are correspondingly changed. The market competition between the east and the west upon which emphasis is laid by defendants apparently finds its strongest play in the rail rates to Atlanta rather than by virtue of competition from river lines.

Complainants allege that whenever a community has grown so as to make the traffic to and from that point of importance the carriers have recognized that and have competed for that traffic, and they

allege that to have done this for, and to maintain it at, these other points and at the same time refuse it to Ashburn is unjustly discriminatory.

It appears that a similar discrimination existed against Ashburn and in favor of Cordele and Tifton as to the state rates, and that that discrimination was found to be undue and the same rates were accorded to Ashburn as to Cordele and Tifton in a report and order of the Georgia railroad commission of September 1, 1911. Ashburn being on an equality with Cordele and Tifton as to state rates, higher interstate rates can be maintained to Ashburn only by agreement and concurrence of the several lines participating therein.

It is interesting to note that as to outbound shipments of commodities which that territory produces the defendants and their connections have voluntarily established rates as follows:

Commodity:	Rate to Charleston.	Rate to Jacksonville.
Lumber from Tifton	9	6¾
Lumber from Cordele	9	7½
Lumber from Albany	7½	7½
Lumber from Ashburn	9	7 1/16
Cotton from Tifton	37	28
Cotton from Cordele	37	32
Cotton from Albany	38	33
Cotton from Ashburn	40	37
Cottonseed from Tifton	....	[1] 220
Cottonseed from Cordele	....	[1] 230
Cottonseed from Albany	....	[1] 220
Cottonseed from Ashburn	....	[1] 240

[1] Per net ton.

On cottonseed products Ashburn has the same rates to the south Atlantic ports as have Cordele, Albany, and Fitzgerald.

In the *Cordele case, supra*, this Commission decided that Cordele was discriminated against in favor of Albany and Americus in the rates on grain from Nashville, and quoted from *Martin* v. *C., B. & Q. R. R.*, 2 I. C. C., 25, in which it was said that the basing-point system resulted in discriminations that were offensive to the act. It was there said that in a legal sense it is of no importance that small towns are local and noncompetitive, and that if under relatively equal rates they can elevate themselves to the dignity of jobbing points it is their right to do so.

In *Board of Trade of Dawson* v. *Central of Georgia R. R.*, 8 I. C. C., 142, the Commission found that Dawson was unjustly discriminated against in favor of Albany and Americus, and that the inequality of rates created a preference in favor of the other cities as against ... on, and said that the discrimination was one which fortified from year to year, since the more favorable freight rates increased ... nce in population. As has been noted, the Commission in

the *Tifton case, supra,* found that the adjustment unjustly discriminated against Tifton and in favor of Albany, Cordele, and Valdosta.

In *Southern Grocery Co.* v. *G. N. Ry. Co.*, 12 I. C. C., 229, the Commission found that the circumstances and conditions obtaining at Moultrie were not substantially dissimilar from those at Tifton, Valdosta, and Fitzgerald and other points, and that the higher rates to Moultrie were unjustly discriminatory.

In *Columbia Grocery Co.* v. *L. & N. R. R. Co.*, 18 I. C. C., 502, we said that if the rate adjustment is built and is to be maintained upon the basing-point system, it should be applied alike to all places where real dissimilarity of circumstances or controlling competition do not exist.

In *Bainbridge Board of Trade* v. *L., H. & St. L. Ry.*, 15 I. C. C., 586, we said that when unjust discrimination against one point and undue preference in favor of another are alleged because of lower rates to the latter, and equality of rates is demanded as a cure for such unjust discrimination, it must be shown that the circumstances and conditions at each of the points are substantially similar and that the lower rates at the one point result from the voluntary action of the carriers at that point. But we think it must also be held that concurrence with others in joint rates that effect unjust discrimination or undue preference is the voluntary action of the carriers at the point where the unjust discrimination or the undue preference exists.

In *Eau Claire Board of Trade* v. *C., M. & St. P. Ry. Co.*, 5 I. C. C., 264, it was said that a railroad can not be said to discriminate against a town which it does not reach "and in whose carrying trade it does not participate." The words "and in whose carrying trade it does not participate" fit the instant case.

The petitions of the carriers in this territory for relief under the provisions of the fourth section of the act were not heard in connection with this case and no feature of them is here decided. It is, however, to be noted that the higher rates at Ashburn than at Cordele or Tifton, to which Ashburn is directly intermediate, contribute to the discrimination of which Ashburn coplains.

It has been frequently said that a carrier may voluntarily accept rates lower than it can be required to accept, and that whether or not a carrier will meet competitive conditions at a particular point rests primarily with it. But this principle does not relieve the carrier from the obligation to remove unjust discrimination created by meeting competitive conditions at one point and refusing to meet them at a neighboring point.

Complainants pray that Ashburn be accorded the same rates as Cordele. Defendants call attention to the fact that if that prayer

were granted Ashburn would have a greater advantage over Tifton than Tifton now has over Ashburn. On the argument complainants assert that Ashburn ought to be put in the group with Cordele, and in any event is entitled at least to be put in the group with Tifton.

In *East Tenn., Va. & Ga. R. R. Co.* v. *I. C. C.*, 181 U. S., 1, the court said:

> That, as indicated in the previous opinions of this court, there may be cases where a carrier can not be allowed to avail of the competitive condition, because of the public interest and other provisions of the statute, is of course clear. What particular environment may in every case produce this result can not be in advance indicated.

We think this is a case in which the environment produces the result that the carriers can not be allowed to avail themselves of the competitive conditions which they have created and desire to maintain at Tifton and Cordele and deny substantially equal treatment to Ashburn. The public interest requires that this unjust discrimination shall be removed.

It is not so much a question of whether or not the railroads compete at one point and decline to compete at another point, but is whether or not by so doing they create or maintain unjust discrimination or undue preference. *Suffern Grain Co.* v. *I. C. R. R.*, 22 I. C. C., 178.

The present rates to Cordele and Tifton have been in effect since 1905, except that during that period the rates on grain, grain products, and hay from the west have been increased. It is therefore contended that these rates must be presumed to be reasonable and that the burden of proof is upon the one who asserts the contrary. There is no allegation or contention that the rates are not remunerative or that they do not yield fair compensation for the service. The principal reasons advanced by defendants in support of their contention that the rates to Ashburn are in and of themselves reasonable are that Ashburn is given the benefit of reflected competition through rates made on the lowest combination on a basing point, and that Ashburn has prospered and grown.

Upon the whole record, we find that the present rate adjustment is unjustly discriminatory against Ashburn and unduly preferential to Tifton, and that defendants should be required to include Ashburn in the same group with Tifton under class and commodity rates from and to the points and territories complained of. Such an order will be entered.

No. 4074.

IN THE MATTER OF THE INVESTIGATION OF ALLEGED UNREASONABLE RATES AND PRACTICES INVOLVED IN THE TRANSPORTATION OF WOOL, HIDES, AND PELTS FROM VARIOUS WESTERN POINTS OF ORIGIN TO EASTERN DESTINATIONS.

No. 2634.

RAILROAD COMMISSION OF OREGON

v.

OREGON RAILROAD & NAVIGATION COMPANY ET AL.

No. 3939.

NATIONAL WOOL GROWERS' ASSOCIATION

v.

OREGON SHORT LINE RAILROAD COMPANY ET AL.

Submitted January 17, 1912. Decided March 21, 1912.

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1. Defendants' rates for the transportation of wool from the far west to eastern points found unreasonable, and reasonable rates prescribed for the future.
2. The blanket system of making rates on wool from the west to eastern points should be broken up and graded rates established.
3. A lower rate on wool in bales should be established than on wool in sacks from these far western points to the east.
4. Wool should be classified under the western classification as second class in less than carloads and fourth class in carloads, with minimum carload weight of 24,000 pounds in a standard 36-foot car.
5. Transit privilege should be allowed on these shipments of wool at intermediate points under certain restrictions.
6. Fourth section applications as to transportation of wool from the west to the east considered, and relief from operation of that section granted in certain cases.
7. No order establishing these rates will be made at the present time, but carriers will be given until May 1 next in which to check in rates in substantial accord with this report.

Cassoday, Butler, Lamb & Foster and *Cornelius Lynde* for Traugott Schmidt & Sons.

E. J. McVann for Traffic Bureau, Commercial Club of Omaha, Nebr., intervener.

Clyde B. Aitchison for Railroad Commission of Oregon.

J. P. Mitchell for Hide, Pelt, Tallow & Wool Dealers' Association of Chicago, Darling & Company, and others, interveners.

Victor O. Johnson and *Paul S. Haddock* for National Wool Growers' Association.

Colin C. H. Fyffe for National Wool Warehouse & Storage Company.

J. C. Lincoln for Merchants Exchange of St. Louis.

E. S. DePass, G. J. Stoneman, and *W. P. McNair* for Arizona Railway Commission and Arizona Wool Growers' Association.

A. F. Verson for Business Men's League of St. Louis.

C. B. Stewart for Utah State Wool Growers.

S. O. Baker for National Mohair Growers' Association.

F. M. Ives for Boston Chamber of Commerce and Boston Wool Trade Association.

W. R. Campbell for National Association of Tanners.

T. W. Tomlinson for American National Live Stock Association.

P. P. Hastings for Santa Fe, Prescott & Phoenix Railway Company.

C. C. Wright, F. P. Eyman, S. F. Miller, and *C. A. Vilas* for Chicago & North Western Railway Company.

James Stillwell for Pennsylvania lines.

O. E. Butterfield and *D. P. Connell* for New York Central lines.

W. F. Dickinson and *W. T. Hughes* for Rock Island lines.

Eugene Fox and *W. F. Dickinson* for El Paso & Southwestern Railroad Company and El Paso & Northeastern Railroad Company.

H. E. Pierpont for Chicago, Milwaukee & St. Paul Railway Company.

F. D. Burroughs for Chicago, Milwaukee & Puget Sound Railway Company.

F. A. Leland for Southwestern Tariff Committee.

T. M. Sloan and *Percival Cherrington* for San Pedro, Los Angeles & Salt Lake Railroad Company.

R. B. Scott and *C. M. Dawes* for Chicago, Burlington & Quincy Railroad Company.

L. C. Stanley for Grand Trunk Lines.

Robert Dunlap, T. J. Norton, Britton & Gray, and *Gardiner Lathrop* for Atchison, Topeka & Santa Fe Railway System.

Warren Olney, jr., A. R. Baldwin, and *A. P. Matthew* for Western Pacific Railway Company.

E. N. Clark and *A. C. Campbell* for Denver & Rio Grande Railroad Company.

G. H. Smith, N. H. Loomis, P. L. Williams, W. W. Cotton, C. W. Durbrow, Baker, Botts, Parker & Garwood, J. P. Blair, E. S. Ives, H. A. Scandrett, F. C. Dillard, Maxwell Evarts, and *W. F. Herrin* for Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon-Washington Railroad & Navigation Company, Southern Pacific Company, Morgan's Louisiana & Texas Railroad & Steamship

Company, Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas Central Railroad Company, Texas & New Orleans Railroad Company, Arizona Eastern Railroad Company, and Southern Pacific Company-Atlantic Steamship Lines.

Charles Donnelly and *James D. Armstrong* for Great Northern Railway Company, Northern Pacific Railway Company, and Spokane, Portland & Seattle Railway Company.

John T. Marchand for Interstate Commerce Commission.

REPORT OF THE COMMISSION.

PROUTY, *Chairman:*

In No. 879, *City of Spokane* v. *N. P. Ry. Co.;* No. 928, *Roswell Commercial Club* v. *A., T. & S. F. Ry. Co.;* No. 1796, *Maricopa County Commercial Club* v. *S. F., P. & P. Ry. Co.;* and No. 2662, *Commercial Club Traffic Bureau of Salt Lake City* v. *A., T. & S. F. Ry. Co.*, rates upon wool, hides, and pelts were attacked, but in all those cases the Commission did not, for various reasons, dispose of those rates at the time of rendering its opinion upon other issues involved, but reserved these questions for further consideration.

No. 2634, *Railroad Commission of Oregon* v. *O. R. R. & N. Co.*, is a complaint by the Oregon railroad commission attacking rates on wool from various points in Oregon to eastern destinations, and upon that complaint testimony had been taken and briefs filed previous to April 1, 1911.

In No. 3939, *National Wool Growers' Asso.* v. *O. S. L. R. R. Co.*, the reasonableness of rates on wool and of the practices of the defendant carriers in the transporation of that commodity from points in many western states to eastern destinations are assailed. This complaint was filed in March, 1911.

It became evident from what developed in the above cases and also from numerous informal complaints received by the Commission that the questions involved could only be properly disposed of in some proceeding in which a comprehensive view of the entire situation could be had, and therefore, on April 3, 1911, a general investigation, No. 4074, was ordered into the rates, regulations, and practices of the carriers which were named as defendants in the transportation of wool, hides, and pelts. This proceeding was treated as taking the place of Nos. 879, 928, 1796, and 2662. No. 2634 was assigned for further hearing, and was, together with No. 3939, consolidated and heard with No. 4074.

Testimony has been taken at many points in the United States, in the course of which a large number of shippers and railroad representatives have been heard, and the case has been briefed and argued at great length.

The original proceeding embraced certain territory east of the Mississippi River, but in view of the course taken by the investigation only originating territory to the west of that river will be considered. The investigation embraced hides and pelts as well as wool, but the record with respect to these two commodities is not sufficiently full to enable us to intelligently dispose at this time of the questions arising in reference thereto.

It was the desire of the shippers of mohair, which was claimed to be in all respects analogous to wool, to embrace that article in the original investigation; but since the complaints of mohair producers had not come to the knowledge of the Commission at the time the original order was made and served, this was not done. In consequence the National Mohair Growers' Association, in behalf of this interest, filed a complaint putting in issue the rates and practices of the carriers in the carriage of mohair. This complaint was heard along with No. 4074, but will be disposed of in a separate report.

The present report, therefore, will only deal with the rates, regulations, and practices touching the transportation of wool between points of origin in territory west of the Mississippi River and points of destination upon or east of that river.

Chicago, Omaha, and Detroit have intervened, asking that transit privileges be accorded at each of these localities.

In the transportation of wool between the points embraced in this investigation carriers frequently violate the rule of the fourth section, and applications are on file asking to be relieved in these instances. Such applications were set down for investigation in connection with the hearing in the above cases, and the applicants have been fully heard.

The following questions are to be considered:

First. Are the present rates just and reasonable, or should they be revised and reduced?

Second. If they are to be revised, should graded rates be established, or should the present blanket system, so far as it exists, be retained?

Third. Should rates be the same upon both sacks and bales?

Fourth. Should the rating on wool under the western classification be changed?

Fifth. Should transit privileges be allowed; and if so, at what points?

Sixth. What action should be taken under the fourth section applications?

1. ARE THE PRESENT RATES REASONABLE?

This traffic mainly originates in what may be known as the far western states. Below is a table, compiled from the yearbooks of

the Agricultural Department, showing, for certain years, the production of sheep in these states and the percentage of that production to the whole United States:

It will be seen that while the total number of sheep produced in the United States did not so much increase from 1883 to 1910, the production in those states under consideration more than doubled. In the balance of the country production during that period declined from about 33,000,000 to 22,000,000, while in these states the increase was from 16,000,000 to 35,000,000. The cause of the decline of production in the older states was doubtless the increasing value of land, which thereby became more valuable for other purposes. It was the practically free land in the far west which developed the sheep industry in that region.

This record shows that the cost of producing wool in this western territory has increased and is increasing. The expense of labor and of all sorts of supplies is greater now than some years ago, but in this respect the sheep industry does not differ from most others. The greater part of the increase in cost is due not to the added expense in caring for the sheep or in shearing and marketing the wool, but rather in providing that upon which the animal subsists.

The free range was the basis of the sheep industry in this region, and the free range no longer exists. The better lands are being taken up by farmers. Much is coming under cultivation through irrigation projects. The sheepman to-day must not only pay for the privilege of grazing, but he is deprived of his winter feeding grounds and must supply artificial food at great expense. In many places the water formerly available has become private property, and this necessitates great outlay upon the part of the ranchman. The serious condition which confronts the grower of sheep in this western country is the diminishing quantity and the continually increasing price of land in its various forms; and this is not a temporary but a permanent condition.

This record contains many pages of testimony devoted to showing the cost of producing wool and the present unprofitable nature of

that business. There can be no doubt that the cost of production has steadily increased and that it will probably further increase, even though prices in general should decline. It seems also clear that for some reason the market price of wool has fallen.

It is impossible to escape the conviction that the future of the sheep industry in these far western states is not a bright one.

All this is no reason why less than a reasonable freight rate should be established; the expenses of these defendant carriers have also increased, and are perhaps likely to still further increase; but the unfavorable outlook for the sheep industry has a bearing in two possible aspects.

Carriers have frequently insisted and some of them are in this case earnestly insisting that the true test of a freight rate is its effect upon the movement of the traffic. If the traffic moves freely under a given rate, that is said to be the best test of the reasonableness of the rate itself.

While this Commission has never accepted this doctrine as urged by the carriers, still it has always deemed the state of an industry a pertinent fact in considering the reasonableness of the rate. If the condition of this industry is such that it can not flourish, that the traffic will not move for the reason that the wool itself will not be produced, that, certainly, is a circumstance which may be considered in comparing this rate with those upon other commodities.

There is this further thought: It appears in this record that comparatively little complaint has been raised against these wool rates until recently, and the absence of such complaint is relied upon by the defendants to show that the charges are reasonable. One witness for the complainants said, when pressed with this suggestion, that in the past the wool business had been so profitable that the woolgrower had never stopped to inquire minutely into the items of his expense. There was enough with which to pay, and he had paid without much thought. That day has gone. This sheep business in the future must, like every other business, be conducted upon lines of rigid economy. The flockmaster can no longer pay without inquiry, but must scrutinize every detail exactly as the manufacturer in the eastern sections of this country does to-day. He must, and he should, among other things, insist that his transportation charges are no more than, under all the circumstances, are just and reasonable. He has not closely examined this item of expense in the past because it was not a thing of great consequence. He should scrutinize it in the future, because in the future his profit must come from small economies.

Only this passing reference has been made to the condition of the sheep industry in the far west, without any attempt to discuss the many pages of testimony upon that subject which this record con-

Statements based on returns in annual reports filed with the Interstate Commerce Commission, for years ending June 30—Continued.

Items.	Southern Pacific Company.		Union Pacific Railroad Company.		Average for United States.	
	1910	1896	1910	1896	1910	1896
Gross earnings from operation per mile of road	[1] $15,363.83	$6,750.29	$15,598.60	$7,670.88	$11,553.00	$6,320.00
Income from operation per mile of road	[1] $6,816.77	$2,375.03	$7,650.94	$3,896.27	$3,896.00	$2,072.00
Number of tons carried 1 mile per mile of road	[1] 745,092	373,733	1,091,053	543,996	1,071,086	523,832
Average number of tons of freight per train-mile	428.02	171.69	431.65	224.87	380.38	196.81
Average distance haul of 1 ton	256.02	233.22	363.78	310.93	[2] 138.31	124.47

[1] Based on data excluding the operation of ferry steamers.
[2] Represents the typical haul of the average railway.

It almost of necessity follows from the above figures that any general level of rates which was just and reasonable in the first period would be extravagant for the second period.

In the early days of the movement of this wool the minimum was often as low as 10,000 pounds. In 1896, when substantially the present rates went into effect, the minimum on sacked wool established by the tariffs was 15,000 pounds. To-day that minimum is 20,000 pounds, and the actual loading, in cars 40 feet in length, equals or exceeds 28,000 pounds. The complainants claim that this is equivalent to an advance in the rate.

This claim as made can not be sustained, for, assuming that the rate per 100 pounds is the same the increase in minimum has imposed, so far as this record shows, no additional burden upon the shipper. The shipper finds no difficulty in loading beyond the present minimum. His business is conducted in every respect precisely as it would be if the minimum were to-day 15,000 pounds. It can not be said, therefore, that so far as the shipper is concerned the rate has been advanced.

At the same time it is true that this increase in loading suggests a decrease in the rate. The actual cost of transportation is much less with a loading of 28,000 pounds than with a loading of from 15,000 to 20,000 pounds. This is an important consideration to be borne in mind when we inquire whether the reasonable rate of 1896 is reason able to-day.

The complainants urge that the rates themselves, in cents per 100 pounds, have been advanced. It will be seen later that there is a somewhat extensive blanket territory covered by the Union Pacific lines, in which a considerable portion of this wool traffic originates, from which the rate in 1896 was established at $2 per 100 pounds to Boston. From this territory the rate is now $2.13. This advance has been due to an increase in the rate by carriers operating east of the

Mississippi River, which has been applied in all cases where competitive conditions do not prevent. To this extent there has been an actual increase in the rate itself.

From territory north and south the rate is to-day somewhat lower than \$2.13 and somewhat lower than it was in 1896. Generally speaking there has been but little change in the rates themselves.

As showing the unreasonableness of the rates upon wool, the charges imposed for the transportation of the live animal were instanced.

From Colorado common points the rate on sheep in double-deck cars to Chicago is 51 cents; the wool rate \$1.22½. From Idaho the wool rate is \$1.65½; the sheep rate 80 cents. Sheep in double-deck cars load approximately 22,000 pounds; the wool loading is 24,000 pounds. The stock car returns empty; the wool car may be availed of for a return load of almost any kind. The sheep must be transported upon an express schedule, while the wool can go at the convenience of the carrier. The cost of the service is in every sense greater in case of sheep than in case of wool.

The value of the wool is much greater than that of the sheep, and the rate is a thing of less relative consequence to the producer, and should, for this and perhaps other reasons, properly be higher than that upon the live animal. But it is difficult to justify any such difference in these rates as now exists.

The Union Pacific lines urge that the sheep industry should be treated as a whole and the rates accorded to that industry passed upon as a whole; that the unreasonably low live-stock rate should be offset against the wool rate should that appear somewhat high.

This Commission has found that the live-stock rates from Colorado common points are not unreasonably low; those from Idaho points are certainly low, but not extravagantly so. However this may be, any such doctrine as that above stated should be applied with extreme caution. It is not always true that the same individual is interested in and has the benefit of both rates. One kind of sheep may be produced mainly for the wool, another kind largely for the mutton. One locality may be more interested in the wool rate, while another is chiefly concerned with the transportation charge on the animal. Even if it be assumed that the present rates upon sheep are too low, this can not have much weight in justifying too high a rate upon wool.

Our attention is directed to the rate upon hops, an article produced largely in the northwest. The value of both wool and hops varies considerably from year to year, but taken on the average, throughout a series of years, the value is about the same in case of these two commodities. Hops are compressed for shipment to a density of about 10 pounds per cubic foot; wool in bales has a density of 19 pounds; in sacks this density varies greatly, but is always more than

that of hops. The minimum in case of hops is 15,000 pounds, and the loading but slightly exceeds the minimum; the minimum on wool is 20,000 pounds and the loading much greater. The other incidents of transportation are substantially alike.

The rate on hops from all points of production upon the Pacific coast and east to the Atlantic seaboard is $1.50 per 100 pounds. Rates on wool exceed this amount from most territory west of the Missouri River, and in much of this territory these rates exceed $2. If no competitive conditions intervened it would be difficult to sustain a higher rate upon wool than upon hops. It is probable that water competition influences the rate upon hops, although this does not seem to have been much insisted upon by the defendants.

The general policy of these defendants has been to establish upon all products of California and the Pacific coast rates of transportation to eastern markets which are the same from all points of production and which are not exceeded at any intermediate point. This is true of all fruits and vegetables, whether green, dried, or in cans. It is true of such articles as beans, honey, etc., while on vegetables, sheep, and cattle the rate from the intermediate point is lower. The complainants insist that the only exception to this rule is wool, and that the rates upon wool are entirely too high in comparison with these rates upon other western products.

The carriers insist that water competition is largely responsible for transcontinental rates, but this does not in the main seem to be true with respect to these rates upon various Pacific coast products. While many of these articles, like beans, canned goods, etc., might move by water, fruits and vegetables could not, and yet we find that the same policy is observed with respect to all.

Assuming that the carriers might, at their election, observe this policy with respect to other products and not in the case of wool, the complainant still insists that the rates voluntarily imposed upon these products by the carriers demonstrate that the wool rates are excessive.

Take oranges. The loading is 26,700 pounds, the car 40 feet in length and of the ventilated-refrigerator type. The service, while not strictly expedited, should be prompt and reliable, more exacting than in the case of wool. A larger per cent of these refrigerator cars come back empty than in case of the ordinary box cars in which wool is handled. For several years the carriers have voluntarily maintained a transcontinental rate of $1.15 per 100 pounds upon oranges, and the Commission has recently established a rate of $1 upon lemons which move under substantially the same circumstances as oranges, with a somewhat shorter haul and a possible loading of 34,000 pounds.

The volume of this citrus-fruit traffic is much greater than in case wool; the value is less; conditions are such that the rate must be

low if the traffic is to be moved; on the whole, while the actual cost of the service may be greater, it is probable that the rate upon oranges ought to be less than the wool rate, but it is difficult to sustain a rate on wool which is almost twice as high for a shorter haul.

The Commission has pointed out in its discussions of the orange rate, and the complainant refers to the same fact in this proceeding, that this orange rate is as high and yields to the carriers as favorable returns as their voluntary rates upon most California products.

The Union Pacific lines introduced a statement covering five articles produced in California for the purpose of showing that the per-car receipts were not, owing to the heavier loading, unfavorable as compared with wool, although the rate was much lower.

The first of these is beans, with an average net load of 44,739 pounds, a gross load, including the weight of the car, of 77,754 pounds, and earnings, under a rate of 85 cents, of $380.28. That article which makes the most favorable showing for the defendants is raisins, with a net load of 51,212 pounds, a gross load of 86,532 pounds, a rate of $1.10, and per-car earnings of $563.35. As compared with these, wool in the grease, in sacks, loads, net 26,700 pounds, gross 61,700 pounds, with car earnings, at a rate of $2.13, of $568.71.

It will be seen that in comparison with the most favorable commodity which the defendants can select the per-car earnings upon wool are greater, although the gross weight is only about two-thirds as much. There can be no doubt that the rates imposed by these defendant carriers for the transportation of wool from this far western country to eastern destinations are much higher than the average imposed for the movement of the other products of that country, and it may be doubted whether any product moving in considerable quantities rests under as high a transportation charge to-day.

The complainants instance the rates upon various fibers like cactus, cocoa, hemp, sisal, manila, ramie, etc., for the purpose of showing that the wool rates are unreasonable in comparison with rates applied to these commodities; but these comparisons are of little value for, first, the fibers themselves are for the most part of a much lower grade than wool, and, second, the rates are generally import rates made under stress of the most acute competition, and not properly used as standards of reasonableness.

A comparison is instituted between wool and cotton, with somewhat greater propriety. The value of cotton is less but not, in recent years, greatly less than that of this wool; the loading of compressed cotton is somewhat lighter than wool; the risk from loss and damage is very much greater than in case of wool. The rate from the point of origin usually carries with it the privilege of unloading and reloading for purposes of grading, compressing, etc. The cost of the service is probably greater with cotton than with

wool. Upon the other hand, the volume of traffic is much greater, and probably the rates themselves have been more affected by competition.

In stating the value of wool it must be remembered that reference is had to wool in the grease. The fleece as clipped contains in this western territory about two-thirds dirt and one-third wool. It is usually shipped in the grease—that is, before the dirt has been removed. The value of this wool upon the ranges in 1910 was from 14 to 15 cents per pound. In the Boston market it would be worth some 2 or 3 cents per pound more. When the dirt and grease have been removed by scouring, so that the wool is ready for spinning, the value is very much increased and the quantity decreased; 1 pound of scoured wool is the equivalent of 3 pounds in the grease.

The complainants insist that sacked wool should be classified in carloads as fourth class. Without at the moment expressing any opinion upon this point it may be remarked that in the past there has been a certain parallel between the fourth class rate and the rate on sacked wool from these western points to the Mississippi River. Some carriers have sought to justify the present rates by reference to the fourth class rate, which is as high or higher.

This Commission in the *Salt Lake case* established a fourth class rate from Utah common points to Chicago of $1.39. *Commercial Club Traffic Bureau of Salt Lake City, Utah,* v. *A., T. & S. F. Ry. Co.,* 19 I. C. C., 218. The wool rate from the same points to the same destination is $1.655.

It has already been observed and should be borne in mind that many of these western rates, both class and commodity, were established long ago, when conditions were entirely different from what they are to-day. Whenever those rates have been examined by the Commission, they have almost without exception been found to be extravagant and have been reduced. This fourth-class rate between Salt Lake City and Chicago itself was $1.60 when the complaint was filed which resulted in the reduction to $1.39.

Carriers have for many years voluntarily maintained a rate upon wool from Pacific-coast terminals to the Atlantic seaboard of $1 per 100 pounds. The tariffs provide that this rate shall apply to wool in bales, but it appears that from Los Angeles at least the baling is of a very inartificial character and does not increase the carrying capacity of the car. At San Francisco and especially in the northwest the baling seems to be more thoroughly done, so that a density of about 19 pounds to the cubic foot is obtained, which will permit the loading of a 40-foot car to from 36,000 to 38,000 pounds. The complainants urge that the defendants should be required to apply from nearer points a rate not substantially higher than this rate from the Pacific coast, which they have for a long time voluntarily observed.

The testimony shows, as will be more fully stated in discussing the fourth-section applications which are before us in this connection, that the $1 rate is forced by water competition. The carriers accept it because no higher rate can be obtained. This being so, it follows from the repeated decisions of this Commission that we can not use it as a standard of reasonableness. It does, however, show that the carriers consider the traffic as remunerative at that figure, and if $1 is remunerative from Los Angeles, a rate of $2.07½ for a haul shorter by from 300 to 850 miles must be very desirable business.

The complainants also urge that previous to 1906 carriers granted rebates from the published rate, thereby indicating that the rate was unreasonably high.

Unquestionably rebates were granted by many of these carriers which were considerable in amount, but this has no very direct bearing upon the reasonableness of the rate. It simply shows that the carriers desired the business at less than its published tariff rate when it was necessary in its competition with other carriers to make such concessions in order to obtain it, which means that in the opinion of the carrier the traffic was desirable at less than the schedule rate, and this more conclusively appears from the maintenance of the $1 rate at the more distant point, just referred to.

The rate on wool from St. Louis to Boston is 57½ cents, from Chicago 50 cents. These rates are in any quantity, and the Chicago rate applies as a blanket from a considerable territory east. The Commission sustained the reasonableness of these rates in *Traugott Schmidt & Sons* v. *M. C. R. R. Co.*, 19 I. C. C., 535.

From originating stations upon the Union Pacific through rates to Boston are constructed by naming a rate to St. Louis and adding to that rate 57½ cents for transportation beyond. Usually a rate from the western point to Chicago is named 7½ cents higher than to St. Louis, to which 50 cents is added for the through rate.

As already said, these rates east of the Mississippi River are in any quantity and apply to conditions of transportation in that territory which are entirely different from this through business. The wool contains a much lower percentage of dirt, and its value in the grease is greater. The minimum established by the official classification for wool in carloads is 10,000 pounds, and the actual loading under this any-quantity rate is said in the brief filed by one of the eastern lines to have been only a little over 7,000 pounds. It is manifestly unjust to apply for the last thousand miles of this through business, loading to approximately 27,000 pounds, a local rate intended to cover any-quantity movement with an actual average loading of less than one-third that amount. It seems clear that the charges of carriers east of the Mississippi River upon this traffic are somewhat too high.

From whatever angle this question is approached it is evident that rates for the transportation of wool from the far west to eastern points are excessive. Carriers call to our attention statements showing that their own expenses have increased, and are likely to still further increase to the probable diminution of their net revenues. These figures have been before us in former investigations. They are entitled to careful consideration, but whatever they may show as to any general reduction in the transportation charges of these transcontinental lines, we still feel that the charges applied to this particular commodity are unjustifiable and that they should be revised and reduced.

2. GRADED RATES.

In revising these rates, shall they be graded, that is, increase with increasing distance, or shall the present blankets be preserved?

These rates naturally divide into three territorial strata, running east and west. The most northerly are in territory through which the Great Northern and the Northern Pacific extend, the most southerly in territory served mainly by the Santa Fe and the Southern Pacific through El Paso, while the great middle area is served by the Union Pacific lines, together with the Denver & Rio Grande and its connections east and west.

Graded rates are already in effect in the northern territory. In central and southern territories the highest rate is found upon what is called the transcontinental base line, which coincides, roughly, with the eastern line of California, Oregon, and Washington. Beginning here the rate to Boston is $2.13, and this rate is carried east a distance of 1,000 miles, nearly to Colorado common points. Upon the south the rate begins at $2.07½, and this rate extends east over a territory of approximately 550 miles.

The complainants ask us to break up this blanket system and to establish uniformly graded rates. To this the defendant lines which are now maintaining the blanket rate object, although their objection seems to be rather against a reduction of the rate than a disturbance of the present system. They would not seriously object to the establishment of graded rates if their total revenues were not diminished.

It frequently happens that group rates are the most just, and promote, in the highest degree, healthy competition. Whether a coal mine can sell in a particular market usually depends upon its rate of freight, and it is the almost universal custom to create groups which embrace certain mines, giving to all these mines the same rate, even though the distance may be different.

The present case does not of necessity call for treatment of this kind. The rate on wool, as already observed, is not so important that upon many other articles. A difference of a cent or a few

cents per 100 pounds does not determine whether wool shall or shall not be produced in a given section.

It was said that unless blanket rates were established, or unless the groups were fixed with reference to topographical conditions, sheep would be driven for shearing from one group to another, and it was stated that groups upon the Northern Pacific and the Great Northern had been established with this general idea. It hardly seems, however, that this suggestion can have much force. The weight of an ordinary fleece is between 6 and 7 pounds. It will require from 12 to 16 fleeces to weigh 100 pounds. Certainly 16 sheep could not be driven a long distance in order that they might be sheared in some territory from which the rate was even 5 cents per 100 pounds less than from territory in which they would naturally remain.

On the whole it seems to us that the proper way of constructing these tariffs is to fix a reasonable rate to the Mississippi River from some point upon the eastern edge of this western wool-producing area, and then to gradually advance this rate going west until the reflex action of the water-competitive rate at the Pacific coast is met, having in mind always that in long-distance transportation like this the rate ought not to increase, mile for mile, as rapidly as in shorter distances.

Having established rates up to the Mississippi River, through rates to the Atlantic seaboard can be constructed by adding to the western rate a reasonable charge from the Mississippi River to the point of destination. We are dealing with the through charge; but in view of the fact that conditions of transportation are radically different to the east and the west of St. Louis, the proper through charge can be better estimated by considering the two portions separately.

3. SACKS AND BALES.

At the present time in this western country the fleece when shorn from the sheep is tied up with a string and thrown into a sack, which is about 7 feet long by 3 feet in diameter. The wool is trodden into the sack, and the weight of the sack, as offered for transportation, depends entirely upon the effectiveness with which the treading is done. In actual practice the weight runs all the way from 250 pounds to 350 pounds per sack. The present minimum for sacked wool is 20,000 pounds, but the testimony shows that as a practical matter this is always exceeded. Our inquiry covered not only the operations of large growers but those of the smaller producers as well, and we are satisfied that to-day no practical hardship would be imposed upon shippers of wool by requiring a loading of at least 24,000 pounds of sacked wool into a standard car 36 feet long, and that the minimum might properly be increased with the increase of the size of the car.

Wool is also baled before it is offered for transportation, the idea being to obtain a greater density and a heavier loading. This baling seems to be to-day of two general kinds.

Under one process three ordinary sacks of wool are tied together and subjected to compression, the effect of which is to render the three bales smaller and the density greater. The amount to which the density can be increased depends mainly upon the thoroughness with which the sacking had been done. If the sacks are lightly filled considerable advantage may be obtained by this form of compression, but where the sacks have been thoroughly trodden practically no benefit results.

The dollar rate from Pacific coast terminals to Boston applies only on baled wool, and the testimony showed that at Los Angeles the only baling actually used was to tie together three bales without actually compressing them. At interior points upon the Northern Pacific, where this form of baling was formerly resorted to, it had become evident before the baled rate was withdrawn that such baling was of little or no practical advantage. Our impression is that to-day about as heavy a loading can be obtained, on the average, with sacks properly trodden in as by this form of baling.

Wool is also baled by being taken from the sack, subjected to a considerable pressure, and secured in the form of square or rectangular bales by iron straps. This is done at Portland and other terminals in the northwest as a preliminary to shipment by water, and the testimony indicates, although it does not very clearly appear, that considerable wool prepared in this manner is also transported by rail from the northwest and perhaps from San Francisco to the Atlantic seaboard.

By this kind of baling a density equaling or exceeding 19 pounds to the cubic foot is obtained, and the possible car loading is very materially increased. Our impression is that wool ought not to be treated as baled unless a density equaling at least 19 pounds to the cubic foot is secured, and that wool so compressed can be readily loaded to 32,000 pounds in a standard 36-foot car, with a proportionate increase as the size of the car increases.

The question now presents itself, Ought two rates to be established, one for sacked wool and another for baled wool? This evidently depends upon whether, on the whole, anything can be gained by requiring the establishment of a lower rate on the baled wool.

It needs no argument to show that transportation should be conducted at the smallest expense possible. Finally, there must come to be an intimate relation between the actual cost of transportation and the rate paid by the public, and every economy ought finally to ~~~ ound to the mutual advantage of the railway and the shipper. is equally axiomatic that the cost of the carriage is decreased in

proportion as the car loading can be increased, and therefore that, ordinarily, shippers should be required to load as heavily as can be practically done.

It has sometimes happened in the past and may occasionally be true to-day that the net returns to a railway are greater if traffic is carried under lighter loading at higher rates than as if the loading were heavier and the rate lower. The facilities in the way of tracks and equipment exist and up to a certain point the additional expense due to the lighter loading does not increase as much as gross revenues from the higher rate. But in these days, and especially in case of these transcontinental lines, where the limit of their present facilities has been reached, where double tracks are being provided because single tracks are no longer sufficient, where additional cars and engines are continually being called for, it certainly is in the interest of both railroad and shipper to secure the heaviest possible loading and thereby the most economical movement of this and every other commodity.

As already said, the cost of transportation decreases in proportion as the loading increases, and this may well justify a lower rate for a higher minimum. Suppose, for example, that the rate from some western point of origin to Boston is $1.75 per 100 pounds. This produces under a minimum of 24,000 pounds per-car earnings of $420. A rate of $1.50 per 100 pounds, with a minimum of 32,000 pounds, would produce earnings of $480 per car. While it costs something more to transport the car which contains 32,000 pounds than it does to transport that containing 24,000 pounds, still it seems probable that the business is practically as good at the lower rate with the higher minimum as at the higher rate with the lower minimum. It would not be unjust to these carriers, under the circumstances, to provide a rate upon baled wool lower than that upon wool in sacks, provided the difference in the rate fairly corresponded with the difference in the minimum.

Assuming, now, that this may be justly done from the standpoint of the carrier, is it desirable from that of the shipper? If under actual conditions shippers can not avail themselves of the baled rate or if the cost of baling is equal or greater than the difference in the rate, then nothing would be gained.

At the present time the flockmaster does not ordinarily shear his own sheep. This work is done at shearing pens by machinery, the sheep being driven from the range to the place of shearing. The wool is, therefore, concentrated at certain points where it can be prepared for shipment in comparatively large quantities.

Great variety of opinion was expressed as to the actual cost of baling this wool. The present charge at Pacific coast terminals when the shipment is by water or by rail under the baled rate is 25

cents per 100 pounds, but the general impression seemed to be that this was altogether too high. While several years ago rates on baled wool were generally lower than on wool in sacks, in recent years no distinction has been made at interior points, and since there has been no inducement to bale there was no experience to guide. In Australia, where wool is produced in large quantities, which is universally shipped to the consuming destination by water, all wool is baled. A witness who was familiar with conditions in Australia and who is also a large producer of sheep in this country testified that a baling press capable of producing the required density could be obtained for from $125 to $150, and that the expense of operating it was not excessive. He gave it as his opinion that wool could be baled for from 2½ cents to 5 cents per 100 pounds. It seems probable that the expense of baling wool would not exceed 10 cents per 100 pounds if this practice were generally resorted to so that the shippers had occasion to find out and adopt the most desirable methods.

It was said in objection to the baling of wool that the consumer preferred to take the wool in sacks for the reason that the fiber was to an extent injured by compression. This objection, however, seems to be of comparatively little weight. Dealers in wool stated that the buyer preferred sacked wool and that sacked wool at the same price would sell somewhat more readily than baled wool, but that this preference was hardly sufficient to become manifest in the price itself.

It was also said that if wool was properly baled it could be kept cleaner and presented to the buyer in a more attractive shape than sacked wool, and in evidence of this it was stated that foreign wools, which uniformly come baled, were preferred to American wools of the same grade for the reason that greater care was used in preparing the wool for the market.

While it is not certain to what extent the rate on baled wool would be availed of, it seems evident that it might be somewhat used, and it is our conviction that, in the interest of economy, and without injustice either to the railway or to competing shippers, a baled rate should be established which should be lower than the sacked rate from these far western points to the Mississippi River by approximately 15 per cent of the sacked wool rate with a minimum of 32,000 pounds in standard 36-foot cars, and a proportionately higher minimum for larger cars.

4. SHALL WOOL BE CLASSIFIED IN CARLOADS?

At the present time the western classification rates wool as second class, any quantity, in sacks, and third class in bales, there being no carload rating. It is contended by shippers that wool should be given a rating in carloads and that this should be fourth class.

In official classification wool is rated first class, l. c. l., and second class, c. l., with a minimum of 10,000 pounds. Rates applicable to the transportation of this commodity in official classification territory are largely any-quantity. Conditions, as already said, are entirely different east of the Mississippi River from those in this far-western country. The wool east of the Mississippi is taken up at numerous points and is carried under comparatively light loading. What would be a fair classification there would not be just in the far west, where the movement is almost entirely in carloads and where the actual loading is from two to three times that in official classification territory.

We are of the opinion that wool should be classified under the western classification as second class, l. c. l., and fourth class, c. l., with a minimum of 24,000 pounds in a standard 36-foot car and a correspondingly higher minimum in case of larger equipment. This should apply to both sacks and bales, no distinction being made for the purposes of classification.

5. TRANSIT PRIVILEGES.

In preparing wool for the spinner it must be assorted and graded, so that the factory may purchase the kind and quality which is needed for its peculiar wants. Since there are different grades of wool in the same fleece and many different grades in the fleeces from the same flock, it becomes necessary that large quantities of wool shall be concentrated for the purpose of assorting and grading.

About one-half the wool consumed in the United States is imported, and this imported wool comes in mainly through Boston, New York, and Philadelphia. Two-thirds of our wool is consumed by the factories in New England, New York, and eastern Pennsylvania.

The rate from Pacific coast terminals and from all that territory bordering upon the coast where the combination upon the terminal controls the rate, is the same to Boston that it is to intermediate territory. These conditions, among which the freight rate is an important factor, have contributed to make Boston the great wool market of the United States.

Wool rates from the far west to the Atlantic seaboard are made by combination upon St. Louis; that is, a rate from the point of origin is named to St. Louis and a rate to the Atlantic seaboard from St. Louis, the through rate being constructed by adding together these two rates. The rate from St. Louis to the seaboard is 7½ cents higher than from Chicago, and ordinarily rates from the western point of origin to Chicago are 7½ cents higher than to St. Louis, so that the combination upon Chicago and St. Louis is the same, but in some instances the rate to Chicago is 10 cents above that to St. Louis,

producing a combination upon Chicago 2½ cents above that upon the Mississippi River.

Ordinarily the combination of the rate from a wool-producing station to an intermediate point like Omaha, plus the rate from that point to the seaboard, is higher than the through rate, from which it results that no city at which the rates do not "break" can engage in the handling of this western wool upon a parity of rates with Boston. In the north, St. Paul and Duluth have enjoyed this facility with respect to traffic originating upon the lines of the Great Northern and Northern Pacific. St. Louis in all instances, and Chicago in most instances, have been able to so handle wool originating in the middle region and to some extent upon the Santa Fe. Most, if not all, other cities have been excluded from this privilege.

In the past Omaha has enjoyed, to a limited extent, a transit privilege—that is, the privilege of stopping off this wool and subsequently sending it on at the balance of the through rate. That locality is now before the Commission demanding that this privilege shall be so broadened as to put that community upon an equality with St. Louis.

Hitherto Detroit has desired to transact a wool business of this character, but has been unable to do so for the reason that the freight rate was against it. That locality now insists that it shall be granted some sort of a transit privilege or some system of in-and-out rates which shall enable it to transact this business upon an equality with Chicago and St. Louis.

Chicago and St. Louis have appeared, demanding that the privileges which they have enjoyed in the past and under which those markets have grown up shall be in some form perpetuated.

We have therefore before us the general question, to what extent these transit privileges shall be permitted or required.

It is patent that the ability of St. Louis and Chicago to handle this wool upon what is equivalent to the through rate, while Omaha and Detroit can not do so, results not from any natural advantage possessed by these favored communities, but solely from the artificial circumstance that the tariffs of these carriers are so constructed as to "break" at these points. It is sometimes said that the fact that one set of railroads terminates at the Mississippi River while a new set begins there is a "natural" advantage possessed by towns located along that so-called basing line, but certainly that argument could not be invoked in this case as against Omaha. The Union Pacific system originates more wool than any of the other transcontinental lines. That system terminates at the Missouri River, Omaha, and Kansas City. If it named a rate simply to the end of its line, Missouri River towns would enjoy the same privileges with St. Louis and Chicago, but because it sees fit to construct a joint rate to the Mississippi

River and Chicago the towns served by it upon the Missouri River are excluded from this business. The mere statement of the fact shows that this form of discrimination is without justification and should not be permitted.

It is insisted that the public interest requires that these intermediate cities should be favored with some system of rates which will enable them to handle this wool in competition with Boston either by the establishment of a reasonable transit privilege or by naming in-and-out rates which are fairly equivalent to the through rate. Since this Commission has held that ordinarily the through rate should be somewhat less than the sum of the intermediate rates, this proposition reduces itself to the claim that transit or what is equivalent to transit should be permitted. In reply the carriers assert that this Commission has set its face against all transit privileges and should, under no circumstances, require, even if it has the jurisdiction, the granting of such a privilege.

Carriers in the past and to some extent in the present have gone to unwarranted lengths in the granting of transit privileges. When the right of transit is applied in improper cases or extended to an improper degree, the result is confusion and discrimination. In so far as transit lends itself to the defeating of the published rate or to the preference of one individual or locality over another, this Commission has condemned it.

Transit in many cases is beneficial in its application. When it can be applied without discrimination it results in the diffusion of business, in giving to rival communities the relative advantages to which they are entitled, and which can be accorded them in no other way, and, generally speaking, in the application of lower transportation charges. The commercial operations of this country have in many instances grown up upon the exercise of transit privileges and could have been developed in no other way. This Commission has never held that transit was to be condemned in so far as it was beneficial and could properly be applied. This case, we think, presents a practical situation of that kind, and what happened in the establishment of the present wool warehouse at Chicago strongly indicates this.

It has been already stated that the great wool market of this country is Boston. Wool in that market is mainly handled by commission men, although largely bought outright by dealers. These commission merchants and dealers purchase the wool upon the ranches in the far west at about the time of shearing, and transport it to Boston, where it is put in store, prepared for the factory, and marketed as the demand arises.

Some years ago large producers of wool upon the lines of the Union Pacific became convinced that there was an understanding between wool buyers from the east which prevented competition and

resulted in prices which were unduly low. Since in the practical conduct of the sheep industry this wool must be stored at some point when sheared and since the necessities of the flockmasters usually require them to receive upon their wool at that time a certain per cent at least of its value, these men conceived the idea of establishing a cooperative warehouse of their own where the wool might be handled in the same way that it was handled by commission merchants and dealers in the east. For this purpose they sent a representative to Boston to arrange for the construction of a warehouse at that point and for the raising of money upon the wool certificates of this warehouse.

When the bankers of Boston were first approached by this representative he received from them a most cordial welcome and assurances that whatever money was required could be had, but as soon as his mission became known there was a change in the attitude of the financial circles in that city and various objections began to be interposed. It finally became evident that it would be impossible to obtain the necessary financial support in Boston, and thereupon this same gentleman went to the financial interests of Chicago, from whom he obtained the necessary backing. Thereupon the present wool warehouse, which is owned and operated by wool growers, was constructed at Chicago and has been in operation for several years, to the entire satisfaction of its promoters.

This institution insists that it ought to be given an opportunity to do business in so far as the freight rate is concerned in competition with similar establishments upon the Atlantic seaboard, and wool growers insist that rates should be so adjusted that other similar warehouses can be established at intermediate points. It seems perfectly evident to us that the public interest so requires.

Nor is there any apparent reason why this may not properly be done. So far as this record discloses and so far as we can foresee from the manner in which this wool is handled, no complications would arise if this western wool were to be given the right of transit. Wool is produced in considerable quantities in territory east of the Mississippi River through which this western wool moves to final destination, and we know from one case already passed upon by the Commission that this eastern wool is concentrated and prepared for market in the same way as the western wool. If dealers were allowed to combine the eastern and western wools in their warehouses, it is possible that there might be substitution of tonnage in transit, which would defeat the rate or result in undue discrimination; but apparently this could not happen if the western wool were kept entirely by itself, as is done to-day at Omaha under their limited transit privileges, and at Chicago in the present wool warehouse.

It is said, however, that even though this ought as matter of fact to be required, the Commission has no jurisdiction as matter of law

to establish a transit privilege, and numerous declarations of this body to that effect are cited.

In *Diamond Mills* v. *B. & M. R. R.*, 9 I. C. C., 311, the Commission held that it had no jurisdiction to require carriers to accord the privilege of milling in transit. That case was decided in November, 1902, and in deciding it the following language was used:

Would it be claimed that the shipper might, as a matter of right, stop a carload of corn at an intermediate point, grind it, and send it on to destination at the through rate? Certainly not. It is universally understood that the right of milling in transit is a special privilege for which extra compensation is usually exacted and which is only permitted under certain terms and conditions (p. 315).

This must not be construed as a condemnation of milling in transit. The fundamental idea involved is very generally recognized in railway operation, as in the reconsignment privileges accorded to many commodities, the milling of grain, the dressing of lumber, the floating of cotton, etc. The Commission has approved the latter practice in 8 I. C. C., 121, and doubtless in many instances the application of the principle is of great benefit to the public. A complete system of interstate railway regulation would probably give the regulating body authority to determine when privileges of this kind should be accorded, and upon what terms, for they all enter into and are really a part of the rate; but no such authority is conferred upon this Commission by the present act. Still less should it be understood that railway companies can in the granting of this and similar privileges discriminate unduly between shippers, localities, or commodities (p. 316).

In *Koch* v. *P. R. R. Co.*, 10 I. C. C., 675, decided April 11, 1905, the same ruling was made, in the following terms:

Shippers are not entitled as a matter of right to mill grain in transit and forward the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination, *Diamond Mills Co.* v. *B. & M. R. R.*, 9 I. C. C., 311, but allowance of the privilege by a carrier to shippers in one section must be without wrongful prejudice to the rights of shippers in another section served by its line.

Both these cases were decided under the act as it stood previous to the amendment of 1906. By that amendment the powers of the Commission were much enlarged and by the subsequent amendment of June 18, 1910, the jurisdiction of this body to deal with matters of this kind was further amplified. At present by the terms of the 15th section—

The Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation or practice is just, fair, and reasonable to be thereafter followed.

It is impossible to compare the 15th section as it stood previous to the amendment of 1906, with the same section to-day, without reaching the conclusion that it was the intention of Congress to invest this Commission with full authority over interstate rates and whatever regulations or practices entered into those rates and determined their value and availability to individuals or communities.

Transit is a practice of universal prevalence. There is not probably a railroad in the whole United States handling any considerable amount of business into whose tariffs it is not incorporated. There is not a state commission with authority to establish rates which does not exercise, as a part of that authority, the right to prescribe and enforce proper transit privileges. This Commission can not, as tariffs are now constructed and as railroad business is now conducted, properly supervise and regulate the interstate rates and practices of this country without authority over transit. In the *Diamond Mills case, supra,* we said:

A complete system of interstate railway regulation would probably give the regulating body authority to determine when privileges of this kind should be accorded and upon what terms, for they all enter into and are really a part of the rate.

While this Commission has, since the amendment of 1906, frequently followed the cases which were decided previously to that date, in no case have we declined to establish a transit privilege where the facts showed that the establishment of that privilege was required. Upon a further consideration of that subject we hold that transit is a practice or regulation included within the provisions of the 15th section, over which this Commission has jurisdiction, and that we may, in a case like this, require carriers to accord that privilege.

For the granting of this privilege carriers should, however, charge a reasonable compensation. It has been the custom of railroads in many cases to give, as a part of the rate, special privileges of this kind, which were sometimes availed of and sometimes not, and it often happens that the rate itself is justified upon the ground that these privileges are allowed. Proper rate making secures to every shipper the performance of the transportation service for no more than a reasonable charge and requires of every shipper the payment for every service performed of what is reasonable.

What is here said as to transit must not be construed as modifying the views of the Commission hitherto expressed upon that general subject. We hold that transit is a regulation or practice over which this Commission has control, and we further hold that upon the facts in this particular case it should be accorded under the conditions specified; but we do not thereby intend to modify in any respect the views of the Commission as expressed in its previous opinion, *In the Matter of Substitution of Tonnage at Transit Points,* 18 I. C. C., 280, neither should what is said as to charging for the transit privilege be laid hold of to impose a charge for this and similar privileges where there is no reduction in the rate.

We come now to the determination of the rates themselves, in accordance with the conclusions reached in the foregoing discussion.

The rates prescribed are, in all cases, in carloads, with a minimum for sacked wool of 24,000 pounds in the standard 36-foot car, and with a corresponding increase in minimum, if the carriers elect, with cars of larger size. In case of wool compressed to a density of 19 pounds to the cubic foot the minimum is 32,000 pounds for a 36-foot car, with a corresponding increase for larger sizes.

The rates which we establish are in all cases through rates to eastern destinations, but in arriving at those rates it is more satisfactory to follow the method now pursued by the carriers and to establish over what may be termed the western lines rates up to a certain point, and from thence over the eastern lines rates to final destination. Rates will be named upon the following systems: Great Northern; Northern Pacific; Burlington; Denver & Rio Grande; Union Pacific; and Santa Fe.

While wool is handled upon other lines, these carriers transport the bulk of that commodity and dominate the rates. The northern lines will be first dealt with.

Through rates are at present constructed upon these lines by naming a rate over the western line to St. Paul and Duluth and a second rate over the eastern lines to the Atlantic seaboard. Rates upon the western lines up to Duluth and St. Paul will be first considered.

The testimony shows that upon the Northern Pacific Mandan, N. Dak., is that point at which wool shipments in any considerable quantity begin. Mandan is 450 miles from St. Paul. The present rate on wool is 65 cents to St. Paul and Duluth. The fourth class rate is 51 cents. We are of the opinion that the present rate on wool is excessive and that it ought not to exceed from Mandan to St. Paul and Duluth, when for movement beyond, 50 cents. Beyond Mandan the rate should increase 2 cents for every 25 miles.

The first wool-producing station upon the Great Northern is Mondak, Mont., distant from Duluth 633 miles. The present rate from Mondak to Duluth on wool, in carloads, is 90 cents. In our opinion this is excessive and should not exceed 63 cents per 100 pounds, in sacks. Beyond this point the rate should increase not exceeding 2 cents for every 25 miles.

The present rates from St. Paul to the east are 60 cents to Boston, and 55 cents to New York, upon wool in sacks. The fourth class rate, all rail, is 64 cents to Boston, and 60 cents to New York. The distance to New York, all rail, is practically 1,400 miles. In our opinion these lines ought not to be required to establish lower rates than those now in force either upon sacked wool or baled wool from St. Paul and Duluth to these eastern destinations.

The average distance from Colorado common points to St. Louis or the Mississippi River by the short line is about 900 miles. In *Kindel* v. *N. Y., N. H. & H. R. R. Co.*, 15 I. C. C., 555, we estab-

lished a fourth-class rate between St. Louis and Denver of 80½ cents. In our opinion the present rates on wool from Colorado common points to St. Louis, which are $1.15 per 100 pounds, are excessive and ought not to exceed, in sacks, for the future 80 cents per 100 pounds.

Beginning at Cheyenne upon the Union Pacific and going west these rates should increase 2 cents for each 25 miles.

Beginning at Trinidad upon the Santa Fe and going west the same measure of increase should be applied.

Upon the Denver & Rio Grande a rate of 90 cents may be applied at the first station west of Pueblo, beyond which the rate should increase at stations upon its main line not exceeding 2 cents for each 25 miles.

Upon the line of the Burlington between Omaha and Billings the rate from Alliance, Nebr., to St. Louis should not exceed 71 cents, and beyond Alliance should increase by not to exceed 2 cents for every 25 miles.

Rates should be constructed in the manner above indicated upon both branch and main lines of the Great Northern, Northern Pacific, Burlington, Union Pacific, and, in connection with the latter, upon the Oregon Short Line, Oregon-Washington Railroad & Navigation Company and upon the Santa Fe. Upon the Denver & Rio Grande these rates should apply only at stations upon its main line.

It was urged upon the argument, and is probably true, that rates from points upon the Colorado Midland, the narrow gauge lines of the Denver & Rio Grande and Western Pacific might properly be somewhat higher, as measured by distance, than the rates above indicated. Each situation of that kind must be dealt with by itself.

The above rates are in all cases upon sacked wool. In our opinion rates upon baled wool of the density an
before indicated should be less by 15 per
named for sacked wool. In computing
than one-half cent should be disregard
more should be treated as 1 cent.

The present fourth-class rate from St.
to New York 41 cents. In our opinio
would be constructed from western point
tions by adding to the rates which ha
in case of sacked wool 52 cents to
in case of baled wool 47 cents to

The rates so established may
through rates or as proportional
River or any other point sel
be applied only to an actual
applied when the traffic
the shipper, and rebilled fr

Transit should be allowed at intermediate points on a direct line upon payment of 2½ cents per 100 pounds, and upon the condition that it applies only to wool originating west of the Mississippi River, which must be kept separate from wool originating at points east of the river.

No order establishing these rates will be made at the present time, but carriers will be given until May 1 in which to check in rates in substantial accord with this opinion. If that has not been done we shall then proceed to the making of a definite order.

6. FOURTH SECTION APPLICATIONS.

The rate on wool in bales from Pacific coast terminals to the Atlantic seaboard and all intermediate territory is $1 per 100 pounds; that is, the rate from San Francisco, for example, to Omaha, Chicago, and Boston is a blanket rate of $1.

As we proceed from the Pacific coast terminal east the rate is constructed by adding to the terminal rate the rate on baled wool from the interior point to the terminal point. If, for example, the rate from station A to Portland, Oreg., is 50 cents per 100 pounds, the rate on baled wool from that station to Boston and intermediate points is $1.50.

Formerly, no rate on sacked wool was made from station A by rail to the east, but in consequence of proceedings begun by the Railroad Commission of Oregon, to-day there is usually in effect a rate on sacked wool which is 25 cents per 100 pounds higher than the rate on baled wool.

In view of the fact that the cost of baling this wool at Pacific coast terminals seems to be 25 cents per 100 pounds, it is perhaps well enough to permit the establishment of rates on sacked wool, from all this territory controlled by the water competitive rate, which are 25 cents per 100 pounds higher than the corresponding rate upon wool in bales.

It will be seen therefore that proceeding east from Pacific coast terminals rates gradually increase until finally a point is reached where the rate as it increases from the west meets the rate increasing from the east.

At the present time this line of meeting coincides roughly with the eastern boundary of California, Oregon, and Washington, so that it may be said, in general terms, that rates from points west of this line to the Atlantic seaboard are lower than rates immediately to the east. Transcontinental lines therefore violate the fourth section in transporting wool taken up to the west of this line through the higher intermediate points of origin to the east, and they ask by their fourth-section applications to be allowed to continue this practice.

The higher intermediate charge is justified upon the ground that the more distant rate is compelled by water competition. In such cases the Commission has established certain rules for its guidance.

First. Is it true that the long-distance rate is forced by water competition? The evidence in this case conclusively shows that wool is transported from Pacific coast terminals to New York for not exceeding 65 cents per 100 pounds. It is plain that rail carriers could hardly maintain a rail rate exceeding the present dollar charge. We find, therefore, that water competition does force the rate of $1 from Pacific coast terminals to the Atlantic seaboard.

Second. Is the long-distance rate which has been established in view of water competition less than would otherwise be reasonable?

Upon this point the finding must be that it is. This rate applies for a distance of 3,000 miles, and we have held in this proceeding that $1 would be a reasonable rate for a very much less distance over these same lines.

Third. Are the rates at intermediate points reasonable?

We have prescribed certain rates from this intermediate territory to various eastern destinations, and these rates must be assumed by us in acting upon these applications to be reasonable rates. Rates from territory contiguous to the Pacific coast are formed by combination upon Pacific coast terminals in the manner above indicated, increasing until they meet the rates prescribed by the Commission as reasonable from intermediate territory. Without holding that a rate constructed by full combination on a competitive rate is of necessity reasonable, we are of the opinion and find that rates on wool, if constructed in the manner outlined, without discrimination, will be just and reasonable. In other words, so long as rates to intermediate territory are constructed upon the mileage scale prescribed in this opinion, increasing with distance until they meet the effect of water competition, and so long as the water competitive rates are themselves made by combination upon the terminal rate, uniformly and without discrimination, the rate on sacked wool not exceeding that on baled wool by more than 25 cents per 100 pounds, from such water-controlled territory, we find that the entire fabric of rates is a just and reasonable one, and therefore that the intermediate rate with respect to any more distant competitive rate is just and reasonable.

Fourth. It remains, finally, to inquire whether the carriers, in the adjustment of these rates have been guilty of any undue discrimination, whether rates so constructed unduly prefer one locality to another. In passing upon this point, each case must stand by itself.

In no case is the rate to any intermediate destination point higher than that to the more distant point at the present time. By this adjustment of rates carriers recognize to an extent market competi-

tion, but this is a discrimination in favor of the intermediate point in the east, and so far as we can see it produces no undue discrimination against the intermediate point in the west. The freight rate, as already said, is not a controlling or a serious factor in determining where wool shall or shall not be produced. There is before us no question of rival cities or of contending markets, and we hold that, as this commodity is actually handled there is no undue discrimination. So long as every point of production is given a rate which we hold to be reasonable and so long as the effect of water competition is applied uniformly and without preference to these western points of origin, we are inclined to grant relief under the fourth section; that is, to permit the carriers to construct and maintain rates upon the basis above indicated, without reference to the rule of the fourth section.

Several applications for relief from the fourth section were set down for hearing along with this general investigation. The fundamental and most important one is that just disposed of. Most others arise in cases where the circuitous line meets the rate of the direct line. For example, the rate from Butte, Mont., to Boston is made by the Northern Pacific, which is the short line. The Union Pacific reaches Butte and handles wool from Butte at the rate established by the Northern Pacific, but the carriage is through territory from which rates fixed as reasonable by this Commission are higher than from Butte. In this case and in similar cases the relief prayed for should be granted, if each locality enjoys that rate to which, by virtue of its location, it is justly entitled. The route by which the traffic is hauled must be a matter of indifference. This statement only applies where no competitive conditions which the carriers may control enter into the situation.

Two or more of the fourth-section applications which were set down for hearing involve the right to charge lower rates from El Paso and other cognate points than are made from intermediate territory. These Texas rates are largely controlled by competition through Galveston, and practically no testimony with respect to this situation is found in this record. To pass finally upon these applications may require the taking of additional testimony; and they will not therefore be disposed of at this time.

No. 3939 contains a prayer for reparation, but that question is reserved for further consideration.

rdains a more and sometimes a less extensive use of
› from this material.

e mohair used in this country is imported, but attempts
ıade to establish the industry within our own borders,
ılt that, to-day, this article is produced in very consid-
ities in New Mexico, in the far northwest, and in a less
ıer parts of the United States. The testimony indicates
ever been a very profitable industry, but that it can be
. regions where other industries will not thrive.

›repared for shipment like wool, in both sacks and bales.
ıewhat heavier than wool. The physical incidents of
ation are almost exactly the same as with wool. Its
ewhat greater than that of wool in the grease in those
› mohair is produced, although the lower grades of mohair
ır as much as the higher grades of wool.

' noted, wool under the western classification takes no
g but is second class, any quantity, in sacks and third
antity, in bales. Mohair is rated as first class, any quan-
e part of the wool produced in these western regions is
ırket upon a commodity rate which is less than the class
.h few exceptions no commodity rates are extended to
e complainant insists that mohair should be given the
:ation and the same rates as wool.

ınt traffic officials who were examined upon this subject,
:ord admitted that the present treatment accorded to mohair was not fair and that the rates should be revised. One of them stated that he knew of no reason why the same rate should not be applied to mohair and wool. While most of the traffic officials thought the rate upon mohair should be somewhat higher than upon wool, the only reason given for that opinion was the greater value.

After carefully considering this matter we can see no substantial reason why mohair should be required to pay a higher rate of transportation than wool. In our opinion it should be classified, under the western classification, as second class in less than carloads and as fourth class in carloads, with a minimum of 24,000 pounds for a standard 36-foot car, and an increase for larger cars. We are also of the opinion that the rates which have been found reasonable in the *Wool case, supra*, which is to that extent referred to and made a part of this opinion, ought not to be exceeded in the transportation of mohair.

No order will be issued at this time, since rates on mohair should be dealt with in the tariffs of the railways whenever the wool rates are revised.

All questions as to reparation are reserved for further consideration.

No. 3909.

LIBERTY MILLS

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted December 7, 1911. Decided April 1, 1912.

As provided in the tariffs of the defendants, charges on certain shipments of grain products were assessed at the rates in effect when the shipments moved from the milling point and not at the rates in effect when the grain moved from point of origin. Reparation denied on the facts of the case.

William O. Vertrees and *F. S. Bright* for complainant.

John B. Keeble, *Albert S. Brandeis*, and *W. A. Colston* for Louisville & Nashville Railroad Company.

Claude Waller and *R. Walton Moore* for Nashville, Chattanooga & St. Louis Railway.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant in this proceeding seeks reparation, and in bar of the demand the defendants plead the statute of limitations. They also contest the claim on the merits.

During the period from August to December, 1908, the complainant shipped out of Nashville, in less-than-carload lots and to destinations in other states in the southeast, flour and bran and corn meal that had been milled by it from grain shipped from the Ohio River crossings during the period from February 19 to July 31, 1908. The traffic moved under any-quantity rates. The case turns on the fact that the net rates applied on the products moving out of Nashville were the balance of the through rates in effect on the date of the reshipments and not the balance of the through rates in effect when the grain commenced to move from the several points of origin.

A tariff that became effective on August 1, 1908, after the inbound shipments of the wheat and corn had been completed but before the outbound shipments of the products from the transit point had commenced, raised the rates on grain and grain products by 2 cents per 100 pounds. The charges were collected by the defendants on

that basis. The demand of the complainant is for reparation on the basis of the through rates in effect on flour and bran when the wheat moved into the milling point. The amount claimed is $2,792.53.

As the defendants plead the bar of the statute, it is well to dispose of that question first: The formal complaint now before us was filed on March 6, 1911; but the claim was first brought to our attention on July 23, 1910. On that date two formal petitions, one against the Louisville & Nashville and the other against the Nashville, Chattanooga & St. Louis, were presented by the complainant. They were returned by the secretary of the Commission for correction of defects in form and substance. It seems that the secretary also informed the complainant that the defendant carriers could make reparation without an order from the Commission because "the charges exacted on the shipment were clearly in excess of the legal tariff rate in effect at the time of the movement;" and the complainant was advised to take the matter up with the carriers with a view to effecting an amicable adjustment. The papers attached to the petitions were also returned to the complainant, and nothing further was heard of the matter until the formal complaint now of record was filed. While the two petitions failed to set out either the points of origin or the points of destination of the shipments in question, and contained no description of them by date or otherwise, it appears that the original inbound expense bills and copies of the outbound bills of lading were attached to the complaints. In these documents the car numbers, waybill numbers, points of origin, and destination were all shown. The amount of reparation claimed against each of the defendants was fully set forth in the petitions. The general basis of the claim was also set up. Under such circumstances we can not doubt that the case comes fully within the accepted ruling of the Commission that the informal presentation of claims of this character stops the running of the statute. The act of the secretary of the Commission in returning the papers with the suggestion that the matter was one for amicable adjustment ought not to operate against the complainant, particularly in view of the fact that this advice was volunteered by the secretary and was based upon a misapprehension of the situation.

There is another technical question on the record. The Louisville & Nashville and the Nashville, Chattanooga & St. Louis are the carriers named as defendants. It appears that all the shipments moved over their lines, but many carriers not named as defendants also participated in the hauls. This defect appears in the petition before us as well as in the two petitions first received by the Commission as above related. In that respect the case seems to come within our ruling in *Rehberg & Co.* v. *E. R. R. Co.*, 17 I. C. C., 508.

The real point in the case is whether the through rates on flour, bran, and corn meal in effect when the grain moved into Nashville from the Ohio River crossings should be applied on the products moving from the mill, or whether the products should take from Nashville the balance of the through rates in effect when they moved out of the milling point.

The general question as to the rates legally applicable on products milled in transit first arose under the amended act, as those who have followed our deliberations will recall, in the proceeding entitled *In the Matter of Through Routes and Through Rates*, 12 I. C. C., 163, where it was held that the rates out of the milling point in effect at the time the raw material commenced to move into the milling point were the legal rates to apply, and not the rates in effect when the finished product moved from the milling point. The ruling was much discussed throughout the country, and the question then arose upon an informal complaint as to whether rates in force when the finished product was shipped from the milling point could be made legally applicable under express and affirmative tariff provisions to that effect. This phase of the question was under consideration by the Commission at the very time these shipments of flour and bran were being made from Nashville. The last shipment moved in December, 1908. It was on November 13, 1908, that our views on that question were announced in *Conference Ruling 119*, which reads as follows:

> Upon inquiry whether a proposed tariff rule providing that "the rate to be applied on all outbound transit grain of record shall be the specific rate that is lawfully in effect from Chicago at the time the grain is reshipped" may lawfully be incorporated in a tariff; *Held*, That the Commission can not sanction the rule, and that the grain can move only as a through movement on the through rate in effect at the time it starts, or as a local movement.

At that time, and indeed for more than 40 years prior thereto, these defendants had been offering their shippers transit privileges on grain; and it had been their custom, and the tariffs in effect at this time specifically so provided, to apply on the milled products of grain forwarded from the transit point the balance of the through rate or the proportional rate in effect on the date of such reshipment or reconsignment. No doubt had been suggested in that part of the country as to the legality of the practice up to the time when the Commission announced a different principle in the ruling now generally accepted as correct. When that ruling was made public, the shippers and carriers south of the Ohio River at once called attention to the fact that it changed a practice of long standing in that quarter; and they asked for a further consideration of the matter and a recognition by the Commission of the legality of the applica-

tion of the through rate in effect at the time the product moves from the milling point, whenever it was so expressly provided in the tariff. As a result of these representations a further investigation was entered upon by the Commission, finally resulting, on June 28, 1909, in a report in the proceeding entitled *In re Milling in Transit Rates*, 17 I. C. C., 113, in which, adhering to our previous ruling, it was held:

Whenever by any transit arrangement through rates are applied, such through rates must be as of the date of the first movement of the shipment from the point of origin under such through rates.

After this announcement the defendants accepted that view of the law and adjusted their tariffs accordingly; and we do not understand that they now contend either that there was error in the conclusions reached in that case or in the principle announced in *Conference Ruling No. 119.* But they are urging here that a different practice had prevailed in that part of the country for many years; that not only the defendants but the grain dealers and millers in that section, including the complainant, joined in good faith in asking further consideration of the question by the Commission; and that there was a general understanding on the part of all concerned that while the Commission had the matter under further examination the previous practice would be continued. As a matter of fact the previous practice was continued, and all grain dealers and shippers, until our ruling in the case cited was made public, continued to pay the rates in effect at the time of the outbound movement. The complainant and its competitors therefore conducted their business on the basis of the same rates, and these rates are not shown to have been excessive. On the contrary they were approved as reasonable in *Morgan Grain Co.* v. *A. C. L. R. R.*, 19 I. C. C., 460. There is no showing therefore either that the complainant labored under any undue discrimination as compared with his competitors or that the charges paid by it were excessive.

On these broad grounds and upon all the facts shown of record the defendants urge that our ruling ought not to be applied retroactively so as to give the complainant relief by way of an award of damages. The matter is not free from difficulty. Generally speaking the law stands for what it means from the date when it takes effect and not from the date when it is construed by the Commission. Ordinarily the date of the announcement by the Commission of its interpretation of a particular provision is therefore of little real importance. There are one or two points, however, that must be mentioned in this connection. Transit is a privilege that may be accorded by carriers to shippers only when properly provided for in their tariffs. If, therefore, the privilege as published by the defendants was illegal and therefore void, it is not altogether clear that this Commission in the

absence of any showing of discrimination may by its order now establish, as of that date, a new and different transit privilege than that named in the tariffs then in effect, and proceed to award reparation on the basis of the privilege so substituted by it for the one published by the carriers. But a point of perhaps more importance is the fact that this complainant paid on its shipments precisely the same basis of rates as did its competitors; it follows, therefore, that an award of reparation in its favor at this time would put it on a preferred basis as compared with its competitors, and would in its result work a discrimination against them. Under all the facts and circumstances shown of record we are of the opinion that the complainant has not made out a case for reparation.

The complaint must be dismissed, and it will be so ordered.

No. 1063.

HILLSDALE COAL & COKE COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY.

No. 1139.

W. F. JACOBY AND ISAAC C. WEBER, TRADING AS W. F. JACOBY & COMPANY,

v.

SAME.

No. 1111.

CLARK BROTHERS COAL MINING COMPANY

v.

SAME.

No. 1130.

JAMES H. MINDS AND JULIA A. MATZ, TRADING AS THE BULAH COAL COMPANY,

v.

SAME.

No. 1137.

JAMES H. MINDS, SURVIVING AND LIQUIDATING PARTNER OF JAMES H. MINDS AND WILLIAM J. MATZ, LATELY TRADING AS THE BULAH COAL COMPANY,

v.

SAME.

Submitted April 20, 1911. Decided March 11, 1912.

Reparation awarded for damages resulting from discriminations practiced by the defendant in the distribution of coal cars.

David L. Krebs, *Harry White*, and *A. M. Liveright* for Hillsdale Coal & Coke Company and Clark Brothers Coal Mining Company.

William A. Glasgow, jr., and *John H. Hall* for W. F. Jacoby & Company.

H. W. Moore, *George M. Roads*, *John H. Minds*, *William H. Patterson*, and *James H. Gleason* for Bulah Coal Company.

George V. Massey, *Francis I. Gowen*, and *Murray & O'Laughlin* for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

In *Joynes* v. *P. R. R. Co.*, 17 I. C. C., 361, it was alleged that the defendant had given a preferred use of its terminal facilities in Pittsburgh to certain shippers of fruits and vegetables, in consequence of which the complainant had sustained loss by reason of the decay of certain of his shipments due to the delay in setting his cars at the unloading platform. We declined to make an award, three Commissioners dissenting, on the ground that this Commission was not authorized under the act to award damages of that character. The general principle announced was that money demands of that nature, arising out of discriminations ascertained and found by the Commission to have been practiced by an interstate carrier, are cognizable only in the courts and that our jurisdiction extends to what is there referred to as rate damages as distinguished from general damages of the kind demanded.

These complaints, in which the same defendant was charged with discrimination in the distribution of its coal-car equipment and in which general damages are alleged to have been sustained by the petitioners by reason of its unlawful practices in that regard, were then pending before the Commission. While they were still under consideration and after our conclusions in *Joynes* v. *P. R. R. Co.*, *supra*, had been announced, the circuit court of the United States for the eastern district of Pennsylvania, in *Morrisdale Coal Co.* v. *P.*

R. R. Co., 176 Fed., 748, dismissed an action for damages alleged to have been sustained by reason of the same rules and regulations of the Pennsylvania Railroad respecting the distribution of its coal cars as are involved in the cases now before us. The claim was based on discrimination, and the authority of the court had been invoked not only to determine that discrimination had been practiced by the defendant against the plaintiff but also to ascertain and enter judgment for the damages so sustained. The court held that this Commission alone could entertain a complaint of that nature. See also *Morrisdale Coal Co.* v. *P. R. R. Co.*, 183 Fed., 929.

It will be seen therefore that with respect to the principle announced in *Joynes* v. *P. R. R. Co.*, *supra*, there is a conflict of view as between the Commission and the very court to which these complainants, if refused any relief here, would doubtless have to resort to secure a judgment for the damages here claimed to have been sustained. In order, therefore, to prevent a failure of justice in these cases, as well as to create an opportunity to secure a final ruling by the courts as to what should be our course of action in the future in such cases, we concluded to proceed with these claims; and having found that undue discriminations had been practiced by the defendant against the complainants, we ordered a reargument on the question of the amount of damages respectively sustained by them by reason thereof.

The history of the complaints, the issues raised by the pleadings, and our course in dealing with them, are fully explained in our previous reports herein. *Hillsdale Coal & Coke Co.* v. *P. R. R. Co.*, 19 I. C. C., 356; *Jacoby & Co.* v. *P. R. R. Co.*, 19 I. C. C., 392; and *Bulah Coal Co.* v. *P. R. R. Co.*, 20 I. C. C., 52. And therefore, in proceeding for the reasons explained to exercise jurisdiction to award damages, no statement of the facts need be made. It will suffice to refer to our reports in the cases cited. The record has now been carefully studied with a view to arriving at the amount of damages which each of the complainants is shown to have sustained, and we shall briefly announce our conclusions:

CLAIM OF THE HILLSDALE COMPANY.

We find that as a result of the discriminatory acts of the defendant the Hillsdale Coal & Coke Company was damaged in the sum of $27,193.01, which it is entitled to recover, with interest from May 9, 1907.

The original claim was for $127,855.65, which upon reargument was restated at $108,207.05, based on the assumption of a full car supply. A more conservative claim of $65,434.87 was also made in the brief on reargument, based on an assumed output of 600 tons per day and what is claimed would have been a fair distribution of cars

to this division of the defendant's lines and a fair share to these mines. Giving full weight to all that we find of record, however, we have been unable to find any clear basis for awarding this sum. Nor is there sufficient proof to enable us in this claim to make any finding with respect to the damages alleged to have been sustained by reason of the excess cost of mining the coal actually shipped to interstate destinations resulting from the irregular and inefficient working of the mine due to the failure of the defendant to furnish a regular and adequate supply of cars.

In arriving at our conclusion we have divided the time into two periods, the first from October 1, 1903, to March 31, 1906, after which the mines in this district were closed down for several months as the result of a strike; and the second from August 1, 1906, to May 1, 1907. We find the following facts established by the complainant's proof, and have used them as factors in calculating the damages:

(*a*) That the complainant's mines, known as Hillsdale Nos. 2 and 3, during each of the two periods could have produced and disposed of an average of 500 tons of coal per working day; and that 22 working days would have been an average working month.

(*b*) That if the complainant had received its proper proportion of the cars available for distribution by the defendant it could have shipped and disposed of 143,880 tons during the first period and 67,795.20 during the second period; that it actually shipped during the two periods 45,059.84 tons and 35,719.25 tons, respectively, making a shortage in its output of 98,820.16 tons during the first period and 32,075.95 during the latter period; that of this tonnage 87,831.36 tons would have moved to points without the state of Pennsylvania during the earlier period and 15,662.68 during the latter period. In other words, we find that the quantity of coal which the complainant was prevented from selling and shipping to interstate destinations as the result of the discrimination against it in the matter of car supply was 87,831.36 tons and 15,662.68 tons for the periods named.

(*c*) That the average selling price for the coal at the mine for interstate markets would have been $1.0711 per ton during the first period and $1.1320 during the second period; that the cost of production during the same periods with its proper proportion of cars would have been 81 cents and 86 cents per ton, respectively; and that the profit lost on the shipments and sales which the complainant was prevented by the discriminatory acts in question from making during the first period was 26.11 cents per ton and during the second period 27.2 cents.

We have attached no importance to the fact, but for a better understanding of the situation it may be well to state, that this complainant has recovered of the defendant a judgment in the sum of $17,500 in

this shortage 9,184.85 tons represents what would have been interstate business during the first period, and 8,497.02 tons during the second period.

(*e*) That the average selling price of the coal mined at Falcon No. 2 during the first period was $1.289 per ton and during the second period $1.25 per ton; that the cost of production at that mine, based on a fair car supply, would have been 92 cents per ton and 96 cents per ton during the respective periods; that the average selling price of the coal from Falcon No. 3 was $1.20 during both periods and the cost of production 92 cents and 96 cents during the two periods; that the average selling price at Falcon No. 4 was $1.07 per ton during the first period and $1.132 per ton during the second period, and that the cost of production at that mine was 82 cents per ton and 86 cents per ton during the respective periods. The profit that would have accrued on the output of the respective mines was therefore as follows: Falcon No. 2, 36.9 cents and 29 cents; Falcon No. 3, 28 cents and 24 cents; and Falcon No. 4, 25 cents and 27.2 cents per ton. This measures the loss on the tonnage which the complainants were unable to ship.

(*f*) That the actual cost of production is shown by the record as $1.1419 per ton during the first period and $1.2063 per ton during the second period at Falcon No. 2; that the actual cost at Falcon No. 3 was $1.166 per ton during the first period and $1.311 per ton during the second period; that the actual cost at Falcon No. 4 was $1.017 and 90 cents during the respective periods; and that the excess over the cost of production, as shown in the preceding paragraph herein, resulting from the irregular car supply, was 22.19 and 24.63 cents per ton, respectively, at Falcon No. 2; 24.6 and 35.1 at Falcon No. 3; and 19.7 and 4 cents for the respective periods at Falcon No. 4. This is the measure we have used in arriving at the loss sustained by these complainants in increased cost of producing the coal actually sold and shipped to interstate points during the period in question.

CLAIM OF BULAH COAL COMPANY.

Following our conclusion in *Bulah Coal Co.* v. *P. R. R. Co.*, 20 I. C. C., 52, that the defendant had unlawfully discriminated against these complainants, we now assess the damages resulting therefrom at $50,307.05, with interest from June 28, 1907.

The reparation prayed for by the complainants aggregates $155,-401.59. In our previous report we took April 12, 1904, as the date for dividing the period of the action. Upon further reflection October 1, 1904, seems more proper, that being the date of the formation of the new copartnership. In arriving at the foregoing amount of ration we have therefore considered the matter in two periods, prior and the other subsequent to that date, and make the fol- g findings:

(*a*) That the fair rating of the mine, fixed by the defendant without objection by the complainants, was 560 tons during both of the periods referred to.

(*b*) That 22 working days would in this case have been an average working month, although it is alleged that the mine could have been worked 26 days per month.

(*c*) That if the complainants had received their proper proportion of the cars available for distribution they could have mined, sold, and shipped 120,415.68 tons during the first period and 214,257.12 tons during the second period; that they actually shipped during the two periods 110,892 and 143,000 tons, respectively, making a shortage in their output of 9,523.68 tons in the first period and 71,257.12 tons for the second period; and that of this tonnage 3,878.04 tons during the first period and 48,540.34 tons during the second period would have moved to and have been sold at interstate destinations.

(*d*) That the average profit on orders received by the complainants for points without the state of Pennsylvania, and which were canceled and unfilled as the result of lack of their fair proportion of available equipment, would have been 71.8 cents per ton during the first period and 25.2 cents per ton during the latter period. This measures the complainants' loss on the coal which they were unable to ship during the period of the action, and the damages allowed on this ground aggregate $15,016.60.

(*e*) That the cost of production at the complainants' mine during the first period was $1.23 per ton on the average, and during the second period $1.08; that the cost of production would have been 88 cents per ton during both periods if a nondiscriminatory share of the car supply had been received; and that the excess in the actual cost of production of the coal mined and shipped to interstate destinations resulting from the discrimination in car supply was therefore 35 cents per ton during the first period and 20 cents during the second period. This is the measure of the complainants' damages in the excess cost of production on the coal actually sold and shipped to points outside the state of Pennsylvania during the period of the action; and the damages awarded on that ground aggregates $35,290.45.

In cases of this kind there is a natural tendency on one side to enlarge and on the other to minimize the claim made. This is characteristic of the record before us. Damages are claimed by the petitioners to an extent not supported by the evidence adduced; on the other hand, the defendant has not sought so much to help the Commission to arrive at a correct award as to show the fallacious character of the factors adopted by the complainants in arriving at their estimates of their damages. The result is a record that is not so helpful as it might be. The responsibility for this, however, rests

with the parties; in such a case we can accept only the responsibility that follows upon a careful study of the record and an earnest effort to weigh all the evidence before us and to reach such conclusions as it fairly justifies.

Many theories as to the elements that should be considered in estimating damages in a case of this kind were advanced by each side. It is said by the complainants that their damages should be estimated on the basis of a supply of coal cars according to the physical capacity of their mines, or at least on the basis of their rated capacity. We have dealt with the claims only on the basis of the fair proportion of the available equipment that each claimant was entitled to receive in view of what we here find would have been a proper rating for each operation. According to the argument and brief on behalf of the defendant there is no sound theory upon which the damages of the complainants may be calculated. The defendant contends in all these cases that the coal which the complainants were unable to mine because of their failure to obtain their fair share of cars still remained in the ground, and that the extent of the damage really suffered can not therefore be ascertained without proof, showing that the coal when subsequently mined was sold at a less profit than might have been realized during the period of the action. We are not prepared to enter upon a discussion of that question. Such claims are clearly justiciable, and we know of no better guide or basis for our action than the rule followed by the courts in similar cases. In the action by the Hillsdale Coal & Coke Company in the state courts, to which reference has heretofore been made, the supreme court of Pennsylvania, in 229 Pa., 261; 78 Atl., 28, said:

> As we look at it, the only known method to get at data from which to estimate what a man is damaged by reason of discrimination, in not furnishing cars or other facilities of transportation, is to give the shipper discriminated against what would have been a reasonably fair profit on whatever is shown to be the fairly probable output of the mine discriminated against, less what was actually shipped from that mine. * * * Counsel for appellant argued that because, as a result of the defendant's discrimination, the coal of the plaintiff was left in the ground, and might be available for future shipment, and as there was no evidence that prices which prevailed throughout the period of the action were abnormal, or in excess of those reasonably ruling, there was no room for the inference that the plaintiff would realize for his coal when it might be shipped in the future less than it would have realized if shipped during the period of the action. But the burden was upon the defendant to show anything of this kind, by way of mitigation of damages, if it could do so, and it offered no evidence for any such purpose.

We do not undertake to say whether this is a correct rule, but simply refer to the case in explanation of our findings.

Orders will be entered in accordance with these conclusions.

No. 1042.

INDIANAPOLIS FREIGHT BUREAU

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL. ON REHEARING.

No. 4513.

RAILROAD COMMISSION OF INDIANA

v.

WABASH RAILROAD COMPANY ET AL.

Submitted March 13, 1912. Decided April 8, 1912.

These complaints attack the rates from Indianapolis and other Indiana cities to the Missouri River as unreasonable and as unjustly discriminatory against the Indiana cities and in favor of Chicago. Conclusions and decisions in *Investigation & Suspension docket No. 24* and *Warnock Co. v. C. & N. W. Ry.*, 21 I. C. C., 546, and former conclusions in *Indianapolis Freight Bureau v. C., C., C. & St. L. Ry.*, 16 I. C. C., 56, adhered to, and complaints dismissed.

Edward E. Gates, *Joseph Keavy*, and *William J. Woods* for complainants.

O. E. Butterfield for New York Central Lines.

John G. Williams for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company and Vandalia Railroad Company.

Morison R. Waite for Cincinnati, Hamilton & Dayton Railway Company and Judson Harmon, receiver.

C. C. Wright and *F. P. Eyman* for Chicago & North Western Railway Company.

R. B. Scott and *G. H. Crosby* for Chicago, Burlington & Quincy Railroad Company.

N. S. Brown and *H. E. Watts* for Wabash Railroad Company.

J. W. Graham and *Braden Clark* for Chicago & Alton Railroad Company and Toledo, St. Louis & Western Railroad Company.

W. F. Dickinson and *S. H. Johnson* for Chicago, Rock Island & Pacific Railway Company.

R. V. Fletcher for Indianapolis Southern Railroad Company and Illinois Central Railroad Company.

W. A. Rambach for Missouri Pacific Railway Company.

Robert H. Day and *Hal. H. Smith* for Detroit Board of Commerce, intervener.

Report of the Commission.

Clark, *Commissioner:*

These cases involve a rehearing of the issues passed upon in *Indianapolis Freight Bureau* v. *C., C., C. & St. L. Ry. Co.*, 16 I. C. C., 56. They were heard, briefed, and argued together, and will be disposed of in one report. Rates are stated in cents per 100 pounds.

In *Burnham, Hanna, Munger Co.* v. *C., R. I. & P. Ry. Co.*, 14 I. C. C., 299, we considered complaint against the through rates from Atlantic seaboard territory to the Missouri River on the first five classes. The rates from eastern territory to the Missouri River territory are made in combination on the Mississippi River crossings. This is especially due to the fact that east of the Mississippi River the traffic is governed by official classification and west of that river by western classification.

The complaint in the *Burnham-Hanna-Munger case* was originally against only five defendants with lines wholly west of Chicago, and attacked only those parts of the rates applying west of the Mississippi River. The through rates from Atlantic seaboard territory being in issue, the Commission, upon request of original defendants, brought in as defendants numerous carriers with lines between the Atlantic seaboard and Chicago, and after full hearing we held that the through rates from the Atlantic seaboard to the Missouri River were unreasonable, and that they were unreasonable because the portions applying from the Mississippi River to the Missouri River were unreasonable. These portions were the full local rates, and were as follows:

Classes	1	2	3	4	5
Rates	60	45	35	27	22

We prescribed as portions of the through rates applicable from the Mississippi River to the Missouri River on shipments from the Atlantic seaboard the following:

Classes	1	2	3	4	5
Rates	51	38	30	23	19

After an exhaustive hearing, including a large volume of additional testimony, the circuit court at Chicago permanently enjoined our order, although a strong dissenting opinion was filed by Judge Baker. *Chicago, Rock Island & Pacific Ry. Co.* v. *I. C. C.*, 171 Fed., 680. The principal contention against our order was that it created unjust discrimination in favor of Atlantic seaboard territory and against other cities in eastern trunk line and central freight association territory.

Upon appeal to the Supreme Court of the United States, the decision of the circuit court was reversed, but not without dissent. *Interstate Commerce Commission* v. *C., R. I. & P. Ry. Co.*, 218 U. S., 88.

During the pendency of this litigation we issued our report in the *Indianapolis Freight Bureau case, supra*, which involved the through class rates from Indianapolis to the Missouri River. We found that the through rates were unreasonable because the portions of the rates applying from the Mississippi River to the Missouri River were unreasonable, and that in lieu of the local rates, which were the same as those which we had condemned as to shipments from Atlantic seaboard territory, the following differentials should be established:

Classes	1	2	3	4	5
Rates	55	41	32	25	20

We did not enter an order prescribing these rates because our order in the *Burnham-Hanna-Munger case* was before the courts.

The decision of the Supreme Court on the *Burnham-Hanna-Munger case* was effective a few days before the expiration of the two-year limit of our order. The rates prescribed by us were published and filed by the defendants, and immediately upon the expiration of the two-year limit of our order they filed tariffs again increasing them to the 60-cent scale. These tariffs were suspended by the Commission and investigation was had thereon in *Investigation and Suspension Docket No. 24.*

In the meantime complaint in *Warnock Company* v. *C. & N. W. Ry. Co.*, 21 I. C. C., 546, was filed, which brought in issue the through rates on the first five classes from central freight association territory, southeastern territory, and Carolina territory, to the Missouri River, the contention being that the portions of the rates applying from the Mississippi River to the Missouri River should be the same on shipments from these territories and from Atlantic seaboard territory. Petition for rehearing in the *Indianapolis Freight Bureau case, supra*, had been granted, and *Investigation and Suspension Docket No. 24*, the *Warnock case*, and the *Indianapolis Freight Bureau case* were set for hearing together. All parties were represented at the hearing, and at that time the complaint in the *Warnock case* was amended so as not to prejudice the interests of complainants in the *Indianapolis Freight Bureau case*, which involved the additional issue of alleged discrimination against Indianapolis and in favor of Chicago. Counsel for complainants in the *Indianapolis Freight Bureau case* was taken ill, and postponement of that case was therefore necessary.

The issues involved in the *Warnock case* were identical with those in the *Burnham-Hanna-Munger case*, except that instead of being confined to the rates from Atlantic seaboard territory all of the territory east of the Indiana-Illinois state line and of the Mississippi River south of that line was involved.

The entire subject was again exhaustively investigated and carefully considered and was disposed of in *Investigation and Suspension Docket No. 24* and *William Warnock Co.* v. *C. & N. W. Ry. Co.*, 21 I. C. C., 546. Under those complaints, which presented the issue as applied to a much broader territory of origin, in the light of those records and the records in the *Burnham-Hanna-Munger case* and the court proceedings thereunder, and of the strong contentions of complainants, admitted by defendants, that the differentials applying from the Mississippi River to the Missouri River on this traffic should be the same from all points in those territories of origin, we modified our original view of establishing differentials applicable on shipments from Atlantic seaboard territory and lower differentials from intermediate points nearer to the base line thus applying the principle of graded rates.

It will be seen, therefore, that probably no situation or rate adjustment has been given more exhaustive investigation and consideration than that of the rates on through shipments from the east and south to the Missouri River.

The eastern trunk line territory is, roughly speaking, that lying east of the Buffalo-Pittsburgh line and north of the Ohio and Potomac Rivers. The central freight association territory is, roughly speaking, that lying north of the Ohio River, west of the Buffalo-Pittsburgh line, and east of the Indiana-Illinois state line. Through these territories rates are established in zones based substantially on distance, the Chicago-New York rates being taken as 100 per cent and the several zones taking established percentages of the Chicago-New York rates. The local rates in central freight association territory are built substantially on distance, using what is commonly known as the central freight association mileage scale. This adjustment has obtained for many years; the commercial interests of the territory and of the cities located therein have grown up thereunder; and it has been the subject of less complaint than any other general rate adjustment. We have sometimes been appealed to to change it, but have declined to do so. *Detroit Board of Trade* v. *G. T. Ry. Co.*, 2. I. C. C., 315. *Saginaw Board of Trade* v. *G. T. Ry. Co.*, 17 I. C. C., 128.

The official classification territory is, generally speaking, coextensive with the eastern trunk line and central freight association territories. St. Louis is one of the important Mississippi River crossings and is reached from New York by single lines composed of the Pennsylvania Railroad and its subsidiaries or of the New York Central and its subsidiaries. The rates from New York to the Mississippi River are thus made by a single line from New York to St. Louis. Other lines extend from the Atlantic seaboard to Chicago

and do not reach St. Louis; various lines extend west from Chicago to the Missouri River and beyond, which have no lines east of Chicago. Naturally, these several lines desire to participate in the traffic from the east, and therefore for many years they have applied to the upper Mississippi River crossings on shipments destined to the Missouri River the same rates that the direct line applies from the east to St. Louis, being 117 per cent of the New York-Chicago rates. And in order that the rates might be uniform the proportional rates from the east to the Mississippi River on such traffic are governed by the official classification.

The question now presented, which was not in issue in the previous cases, except in the original *Indianapolis Freight Bureau case*, is the relationship between the rates from Indianapolis to the Missouri River and from Chicago to the Missouri River. From Indianapolis these rates are the local central freight association distance rates governed by official classification from Indianapolis to the Mississippi River plus the differentials prescribed by us in the *Warnock case* to the Missouri River governed by western classification. From Chicago they are certain differentials to the Mississippi River plus the local scale from the Mississippi River to the Missouri River, all governed by western classification. Because of competition between the carriers the local class-rate scale from Indianapolis to St. Louis is applied as a scale of proportional rates governed by official classification to the upper Mississippi River crossings on traffic destined to the Missouri River. The Indianapolis traffic can therefore move through all of the several Mississippi River crossings at the same rates. The first-class rate from Indianapolis to the Mississippi River is 38 cents, to which is added the first-class differential of 55 cents, making the through rate to the Missouri River 93 cents. From Chicago the differential on first class to the Mississippi River is 20 cents, to which is added the local to the Missouri River of 60 cents, making the through rate 80 cents. On the other classes the differences are smaller. On some articles the rates from Indianapolis to the Missouri River are lower than the combination of the class rates, due to the existence of commodity rates applying from the Mississippi River to the Misouri River. These differences are alleged to be unjustly discriminatory against the Indiana cities and unduly preferential to Chicago.

In docket No. 4513 the Wabash, the Toledo, St. Louis & Western, and the Chicago & Alton roads are the only defendants, and the complaint is as to through rates from certain Indiana points other than Indianapolis. The Wabash, individually, serves certain of those points and also Chicago over its own lines to the Missouri River. It is argued that the Toledo, St. Louis & Western and the

Chicago & Alton, having to a substantial extent common officers, should be considered as constituting a single through line.

Complainants contend that differentials should be established from the Indiana cities to the Mississippi River which, added to the differentials west of that river, would make rates from Indianapolis to the Missouri River not more than 5 cents per 100 pounds higher on first class than from Chicago. As noted in the original *Indianapolis Freight Bureau case*, there is no single through line from Indianapolis to the Missouri River, unless the Indianapolis Southern be considered and treated as part of the Illinois Central. The short line from Chicago to the Missouri River is the Santa Fe, 458 miles. The practical short line from Indianapolis to the Missouri River seems to be via the Vandalia and the Wabash, 517 miles. The average distance from Chicago to the five principal Missouri River crossings is about 484 miles, and from Indianapolis it is about 524 miles.

Some of the lines that serve Indianapolis also participate in traffic under the differentials from Chicago to the Mississippi River. The short line from Chicago to the Mississippi River is the Chicago & North Western, about 135 miles. This road has no line to St. Louis and no line east of Chicago. Among other roads having lines from Chicago to the Missouri River and no lines east of Chicago or to St. Louis may be mentioned the Chicago, Milwaukee & St. Paul, crossing the Mississippi at Savanna, and the Chicago Great Western, crossing at Dubuque. These lines are of course interested in moving traffic via their own lines and crossings and are not interested in that which moves through St. Louis.

The Chicago & Eastern Illinois, the Cleveland, Cincinnati, Chicago & St. Louis, the Pennsylvania Lines, and the Chicago & Alton have lines more or less direct between Chicago and St. Louis and do not reach any of the upper Mississippi River crossings. If these lines participate at all in this traffic from Chicago they must do so under equal rates with the lines through the upper Mississippi River crossings, and they therefore join in applying the Chicago differentials through the St. Louis gateway. In doing this they are joined by roads west of St. Louis, like the Missouri Pacific, that have lines from St. Louis to the Missouri River, and do not reach any of the upper Mississippi River crossings.

The Chicago, Burlington & Quincy has lines from Chicago reaching the Mississippi River at Savanna, Rock Island, Burlington, Quincy, Hannibal, and St. Louis, and the Missouri River at Kansas City, Atchison, St. Joseph, and Omaha. It can move traffic over its own lines to the several Missouri River crossings without touching St. Louis. It can also join, west of St. Louis, with others that have lines from Chicago to St. Louis only, in through routes via St. Louis.

The Chicago, Rock Island & Pacific has a line west from Chicago crossing the Mississippi River at Rock Island, whence over diverging lines it reaches the Missouri River at Kansas City, Atchison, St. Joseph, and Omaha. It also can handle the Chicago traffic to the several Missouri River crossings without touching St. Louis. It also has a line from St. Louis to Kansas City, and can also join with other roads having lines only from Chicago to St. Louis, in through routes via St. Louis.

The Illinois Central has its own line from Chicago to Omaha, crossing the Mississippi River at Dubuque. It does not reach any of the other Missouri River crossings except Sioux City. It also has its own line direct from Chicago to St. Louis and can thus join in through routes to the lower Missouri River crossings via St. Louis.

If, therefore, we were to find that unjust discrimination exists as alleged and the carriers with lines in Indiana were to withdraw entirely from the Chicago-Missouri-River traffic, it would move at the same rates, through the same crossings, and in the same volume.

The Wabash Railroad desires to secure, and probably needs, all of the traffic that it can get. It, therefore, also joins in the application of the Chicago differentials through the St. Louis gateway, because that is the only way in which it can participate in that traffic.

The rates from Chicago to the Missouri River are the same, or substantially the same as from Memphis. Complainants allege that the Chicago differential basis was established for the purpose of equalizing Chicago with Memphis without disturbing the local rates between the rivers. The older tariffs, however, seem to show that the differential scale was in effect from Chicago as early as 1876, and that the 80-cent scale from Memphis was first established in 1893 by the Kansas City, Fort Scott & Memphis Railroad, and was met by the competing lines. The distance from Memphis to Kansas City via the Kansas City, Fort Scott & Memphis road is 484 miles, the same as the average distance from Chicago to the five principal Missouri River crossings.

Complainants present carefully prepared rate comparisons as between the Indiana cities and Chicago which, taken by themselves, and assuming that all other conditions were substantially the same, would be persuasive, but the conditions are not the same. As has already been noted, the rates from Chicago to the Missouri River are governed by western classification, while the rates from Indianapolis to the Mississippi River are governed by official classification. The ratings in these classifications are not by any means the same. The general level of rates in the territory west of the Mississippi River where density of population and of traffic has been less than in the territory east of the Mississippi River is, and always

has been, higher than in central freight association territory. For the same reason many articles are classified in higher classes in western classification than in official classification. The fact that the rate on a certain class might be the same in both classifications would not at all indicate that it applied to the same articles, and the fact that an article was classified in the same class in both classifications would not indicate that the rate was the same for the same distance or service. It would not be possible to establish differentials from Indianapolis which would equalize the charges under the differentials from Chicago unless both lines of differentials were governed by the same classification. It would therefore be necessary to bring the western classification over to Indianapolis or carry the official classification through to the Missouri River. It appears that to apply the western classification from Indianapolis would in the main and in a general way result in reductions in rates but those reductions would not be at all equal, as they would range all the way from 1 per cent to about 45 per cent. It would also result in many advances in rates varying from about 1 per cent to about 45 per cent. These calculations are made on a substantial list of articles that are actually shipped from Indianapolis. Of course such change would please those shippers whose rates were reduced, provided they were not put at a disadvantage as compared with their competitors, but those whose rates were substantially increased would feel differently.

The relationships between the rates on the different classes are not the same in western classification and official classification territory. On the first five classes those rates are as follows:

Classes	1	2	3	4	5
New York to Chicago	75	65	50	35	30
Mississippi River to Missouri River	60	45	35	27	22
Chicago to Missouri River	80	65	45	32	27

The Detroit Board of Commerce of Detroit, Michigan, has intervened in these cases with the prayer that if the petition of the Indiana cities is granted in whole or in part a corresponding readjustment be made from Detroit so that the present relationship of rates from Indianapolis and from Detroit shall be preserved. This intervener says that if Indianapolis and Indiana cities are to be accorded the Chicago differentials or proportions thereof no reason exists why Detroit should not be accorded its present parity with Indianapolis, with which city, and also with Chicago and other manufacturing and distributing points, Detroit competes in the Missouri River territory.

The Dayton Chamber of Commerce of Dayton, Ohio, petitioned for and was granted leave to intervene. Its petition alleged that the rate adjustment was unjustly discriminatory against points and shippers in central freight association territory and in favor of Chicago

and other Illinois points. This intervener was not represented at the hearing and presented no testimony, brief, or argument.

As has been noted, the principal contention relied upon in enjoining our order in the *Burnham-Hanna-Munger case* was that it created discrimination as between the Atlantic seaboard and cities intermediate between the seaboard and the Mississippi River. Complainants admit that if the prayer of Indianapolis is granted, readjustment will be necessary from other eastern cities, and it is obvious that if a readjustment is made as to Indianapolis, a similar readjustment must be made from all of the eastern cities in order to preserve their present relationship with one another. In *Detroit Board of Trade* v. *G. T. Ry. Co.*, *supra*, we said:

In the consideration of a question like the one before us it is necessary to bear in mind that a change of rate at one point requires change of others also. Relative rates can not be changed at Detroit alone; if they could, its merchandise and dealers might obtain much benefit from having the prayer of this petition granted, but change there means change by the application of the like principle at Port Huron, Toledo, Fort Wayne, and, in fact, the whole interior. It means change also at Chicago, because the same reduction would have to be made by the application of the same principle there.

In the syllabus of that case it is said:

Where a system of rates is made by a number of carriers covering a widely extended territory which seem to be reasonable in themselves and relatively fair, so far as the evidence in this case shows, the Commission will not order them to be changed at one important point, thereby rendering other changes unavoidable at a large number of other points, and throwing the rates of the entire system into confusion and unsettling values, unless a case arises in which it is necessary that this should be done in order to enforce compliance with the law and to reach the ends of substantial justice.

Serious difficulties are always encountered when long-established rate relationships as between different communities and competing shippers are disturbed. In the *Warnock case* we prescribed differentials on Missouri River traffic applicable west of the Mississippi River on shipments originating east of the Indiana-Illinois state line. In doing that we took into consideration the differential adjustment from Chicago, but since that decision was rendered we have received numerous informal complaints from shippers at and in the neighborhood of Chicago who allege that the change thus made operates to their disadvantage and gives an advantage to shippers at Indianapolis and other central freight association points over Chicago which they did not before possess.

As to some traffic, more especially on that destined to large groups of points of origin or of destination, the western or southern classification is extended into official classification territory. This is true to a greater or less extent on traffic to Texas, where the major portion of the state is under a common-point rate, and in transcontinental tariffs where the largest blanket known applies.

The same thing is true as to some commodities, especially where a carrier whose lines lie principally in western or southern classification territory has also a subsidiary or feeder line into official classification territory. Such situations, together with the competition of carriers hereinbefore referred to, and the earlier observance of the long-and-short-haul provision of the act, have put Indianapolis into the Cincinnati-Chicago group on rates to Texas, and, through affiliation or common ownership of the Indianapolis Southern and the Illinois Central, in southern classification to certain parts of the south and southeast.

If the western classification were brought over to Indianapolis, then in making similar adjustments from the other eastern cities it would be necessary to extend the western classification to them also, and the same differences in classification of articles and in rates that have been pointed out as to Indianapolis would obtain as to each of the other places, accompanied by both increases and reductions in rates.

Complainants point out alleged discriminations against Indianapolis in the total charges on shipments from Atlantic seaboard territory to Indianapolis and reshipments from Indianapolis, as compared with similar reshipments from Chicago. If Indianapolis is entitled to an adjustment of rates under which it can merchandise and reship goods brought from the Atlantic seaboard on exactly the same basis as Chicago, all other intermediate cities are entitled to equal combinations—an adjustment that is impossible except under a uniform classification, and probably impossible then on account of the competition between carriers which serve certain points and territories and do not serve certain other points and territories in which the goods and the dealers compete with each other. In this connection it is to be noted that one substantial difference in geographical location between Indianapolis and Chicago is that the latter is a lake port. The combinations of class rates from New York to important intermediate cities and class rates from those cities to the Missouri River, taking first class as illustrative, are: On Chicago, 155; on Albany, 154; on Rochester, 152; on Buffalo, 150.5; on Pittsburgh, 156.5; on Cleveland, 160.5; on Detroit, 160; on Cincinnati, 161; on Indianapolis, 163; on St. Louis, 143.

Under the present adjustment of rates from the Atlantic seaboard
Missouri River, the combination on Chicago is 7 cents higher
class than on St. Louis; is 9 cents higher on the second
higher on the third class; 1 cent lower on the fourth
the same on the fifth class. This relationship has appar-
for a great many years, and there would certainly be

as much reason for equalizing the combinations as between Chicago and St. Louis as between Indianapolis and Chicago.

Complainants emphasize the question of comparative distances. Distance is a factor always to be considered and is sometimes controlling, but established commercial conditions, competition of water carriers, and competition between railroads with termini at different points make it impractical to consider this situation from the standpoint of distance alone.

Complete equalization of rates could not be effected except by full consideration of the length of haul and the rates on raw materials and manufactured products, respectively. In some instances Indianapolis has a shorter haul than has Chicago on raw material and a longer haul on the finished product, and in other instances the same is true as to Chicago.

The Wabash Railroad has lines from Detroit, Mich., and Toledo, Ohio, through northern and central Illinois to the Mississippi River at St. Louis, Hannibal, Quincy, and Keokuk, and from St. Louis and Hannibal to Kansas City and Omaha on the Missouri River. It also has a line from Chicago, and in order to participate in the traffic from Chicago has joined in the application of the Chicago differentials through its Mississippi River crossings. From Danville, Ill., just west of the Indiana state line, as illustrative, it applies the Chicago differentials, but this is so because the Chicago and Eastern Illinois, with a direct line between Chicago and St. Louis, and reaching no Mississippi River crossing north of St. Louis, has included Danville in the Chicago adjustment, and the Wabash must meet that competition or retire from that business. This defendant having lines lying as they do both in official and western classification territories must compete with the lines of other carriers in those territories and adjust its competitive rates according to the governing classifications. Its mileage in central freight association territory is but 4.83 per cent of the total. Its tonnage to the Missouri River and states bordering thereon is 6.05 per cent of the total from central freight association territory. Its mileage in Indiana is 4.8 per cent of the railroad mileage of the state, which percentage is reduced to 2.9 when the Montpelier-Chicago division is deducted. It appears that this defendant, in the months of February and August, 1910 (taking them as representative), handled only some 724,000 pounds of freight from Indiana points to the Missouri River, including that delivered to it by other carriers at its junction points.

If the Wabash were required to make such an adjustment as is here sought, competitive conditions would certainly force corresponding adjustments by competing lines and the effect would be the same as if all the defendants were required to comply with complainants' prayer.

In the original report in the *Indianapolis case* we found that the rates applicable from the Mississippi River to the Missouri River as parts of the through rates on class-rate traffic from Indianapolis to the Missouri River were unreasonable to the extent that they exceeded the following:

Classes	1	2	3	4	5	A	B	C	D	E
Rates	55	41	32	25	20	22.5	18	15.5	12	10

As before stated, we entered no order as to these rates, because our order in the *Burnham-Hanna-Munger case* was enjoined.

The rates established under the *Warnock case* are as follows:

Classes	1	2	3	4	5	A	B	C	D	E
Rates	55	41	32	24	20	22	18	15	12	10

In the original report we found that it would be unduly prejudicial against Indianapolis and unduly preferential to Chicago to have the rates on the first five classes from Indianapolis to the Missouri River exceed the rates simultaneously in effect on the same classes from Chicago to the Missouri River by more than the following:

Classes	1	2	3	4	5
Rates	13	12	11	10	7

The Indianapolis rates are now higher than the Chicago rates by the following:

Classes	1	2	3	4	5
Rates	13	8.5	11	8.5	6.5

Through the competition of carriers and the well-known common point rate adjustment in Texas, Indianapolis is placed in a territory from which the rates to Texas points are the same as from Chicago, and from this it is argued that if Indianapolis is entitled to the Chicago basis to Texas, it ought to be entitled to it to the Missouri River. This, however, does not necessarily follow. Competitive influences may bring about an equalization on traffic to a certain defined territory which is not accorded as to any other territory; and unless unjust discrimination results, the carriers are within their rights in maintaining such an adjustment.

The rates from Buffalo and Pittsburgh to the Mississippi River have for many years been the same, but if complainants' prayer were granted, and the same principle were applied in the same way to other cities, the rates from Pittsburgh would be lower than from Buffalo, and thus established commercial conditions of long standing would be disrupted. A scale of rates that would equalize Indianapolis with Chicago on Missouri River business would in no sense equalize Indianapolis with Chicago on business from Pittsburgh and other producing points.

Under the present adjustment the rates per ton per mile on the first five classes to the Missouri River from Indianapolis and Chicago are the following in cents:

Classes	1	2	3	4	5
Indianapolis	3.55	2.80	2.21	1.54	1.28
Chicago	3.30	2.68	1.86	1.32	1.12

I· these comparisons the classes in the official and western classifications are matched against each other. An analysis of the differences in the ratings would narrow the differences in these figures.

In the *Burnham-Hanna-Munger case*, in *Investigation and Suspension Docket No. 24* and in the *Warnock case*, consideration was had as to the effect of the changes upon the revenues of the defendants west of the Mississippi River. In the instant cases, we have no showing as to the effect upon defendants' revenues of granting complainants' prayer. Complainants urge that where discrimination exists the question of revenue may not be considered, but where as in this case it appears obvious that granting the prayer will necessarily involve such widespread reductions in rates, it must be assumed that the effect upon the revenues of the defendants will be not only great but injurious and perhaps confiscatory.

Complainants refer to our decision in *Alpha Portland Cement Co.* v. *B. & O. R. R.*, 22 I. C. C., 446, as applicable to and controlling in the situation here considered. In that case, however, we were considering the rates on a single commodity usually moving under commodity rates and the essential point in the unjust discrimination there found was that the Universal plant was accorded rates in central freight association territory on the mileage scale, while on shipments to that territory, the Manheim plant was accorded and given the same rates as Baltimore, 269 miles farther east—a very different situation from that here presented.

In the original report in the *Indianapolis case* we prescribed rates applying from Indianapolis to East St. Louis on chairs and furniture, not otherwise specified, destined to Missouri River points, not in excess of 21 cents per 100 pounds on a carload minimum of 20,000 pounds, and 27 cents per 100 pounds on a carload minimum of 12,000 pounds. That order was complied with, but shippers at Indianapolis, it appears, find themselves at a disadvantage because in western classification territory generally the carriers provide that when they are unable to furnish a car of the dimensions or capacity ordered, two smaller cars may be used on the basis of the minimum weight applicable to the car ordered.

In *Indianapolis Freight Bureau* v. *C., C., C. & St. L. Ry. Co.*, 15 I. C. C., 504, this question was considered exhaustively, but no order as to it was then entered as it was deemed advisable to give

the carriers opportunity to remove the difficulties. It is now stated that the direct lines from Indianapolis to the Mississippi River have not complied with that recommendation, and that complainants will move for the entry of an order thereon. The view which the Commission takes of this matter is indicated in numerous of our reports, and more definitely and we think finally as to official classification territory in our report on rehearing in *Noble* v. *B. & O. R. R. Co.*, 22 I. C. C., 432.

In their brief complainants say that in view of their petition for entry of an order in the other case it is immaterial to them whether or not that question is passed upon here and that it will be satisfactory to them to have it disposed of in the other cases which involve specifically minimum weight rules. We shall therefore not consider that question further here.

As stated, these issues have been carefully and exhaustively considered by us in the several proceedings to which we have referred. Defendants have complied with our orders and recommendations in those proceedings and have established an adjustment somewhat more favorable to Indianapolis than that which, in the original *Indianapolis case*, we found to be reasonable, and on further full consideration of the situation and of the entire record, we are of the opinion that substantial justice has been done, that our former conclusions should be adhered to, and it follows that these complaints must be dismissed.

It will be so ordered.

No. 4205.

NEW ORLEANS BOARD OF TRADE, LIMITED,

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY ET AL.

Submitted March 8, 1912. Decided April 1, 1912.

The fact that rates on rough and clean rice from Texas points to New Orleans are the same, found not to constitute undue discrimination against New Orleans millers and in favor of Texas millers.

George H. Terriberry for complainant.

C. C. Oden for Houston Chamber of Commerce, intervener.

F. C. Dillard and *H. A. Scandrett* for Galveston, Harrisburg & San Antonio Railway Company; Texas & New Orleans Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; and Louisiana Western Railroad Company.

T. J. Norton and *J. S. Hershey* for Gulf, Colorado & Santa Fe Railway Company and Gulf & Interstate Railway Company.

F. H. Wood and *J. E. W. Fields* for New Orleans, Texas & Mexico Railway Company; Beaumont, Sour Lake & Western Railway Company; and Orange & Northwestern Railroad Company.

Report of the Commission.

Lane, *Commissioner:*

The rates on clean rice and rough rice from practically all Texas points to New Orleans have been equal since January 15, 1910. This relation of rates, it is urged, has the effect of excluding New Orleans millers from competing with Texas millers in the purchase of rough rice from Texas producers. The original petition also attacked the rates on both clean and rough rice as unreasonable, but at the hearing the complainant abandoned its attack on the rates *per se*. The single problem now presented is whether by making the rough-rice rates as high or higher than the clean-rice rates discrimination is effected against rough rice and New Orleans millers and in favor of Texas millers.

While the complainant's request is simply to have a differential established between the rates on rough and clean rice, it was made

clear at the hearing that if a differential were to be established this could only be done satisfactorily by reducing the rough-rice rates. It was conceded that an order establishing a differential by raising the clean-rice rates would not improve the situation for two reasons—first, because such an increase in the clean-rice rates from Texas to New Orleans would not help New Orleans unless a proportional increase was made on clean-rice rates from all mills in the rice belt except New Orleans, since clean rice is shipped to New Orleans not for local consumption but for distribution over the United States; secondly, such an increase would be objectionable to Texas points, because it would increase the differential already existing against Texas millers as compared with the New Orleans millers in shipping clean rice to the southeast. Accordingly, any increase in the clean-rice rates from Texas points would greatly unsettle competitive conditions. What we are asked to do therefore is to reduce the present rates on rough rice from Texas points to New Orleans so that they will be lower than the clean-rice rate.

In support of complainant's position that the rough-rice rates should be lower than the clean-rice rates evidence was offered to show that rough rice is only about two-thirds as valuable as clean rice; that there is little loss or damage to rough rice as compared to the loss or damage to clean rice for which the carrier is liable; that the consignee of rough rice unloads the shipments at his mill, whereas the carrier must go to the expense of unloading the clean rice at its depot; that no rough rice is shipped from New Orleans by water, whereas some clean rice is so shipped and is accorded free ship-side delivery, which costs the carrier 3 cents per 100 pounds extra; and finally that rough rice is loaded to the maximum of the car, while in accordance with the wishes of buyers of rice, the clean rice is commonly loaded only to the minimum capacity of the car. The complainants insisted that for the above reasons it was abnormal for the rough-rice rate to be as high as the clean-rice rate. In further support of this conclusion exhibits were filed showing that as to all rates from Louisiana points to Louisiana mills and Texas points to Texas mills, and as to almost all rates from Louisiana points to Texas mills and Arkansas points to Louisiana and Texas mills the rough-rice rates were lower than those on clean rice. As emphasizing the injustice of the present equality of rates on rough and clean rice, evidence was offered to show that it takes 180 pounds of rough rice to make 100 pounds of clean rice, and hence in view of the present adjustment the New Orleans miller who buys rough rice in Texas has to pay as much freight per pound on the 80 pounds of relatively worthless by-product as on the 100 pounds of valuable manufactured product.

The defendants replied that while it was contrary to the usual practice for the rough and clean rice rates to be equal, yet under special circumstances the rates on some other manufactured commodities had been reduced to the level of the rates on the raw product, and as instances cited the rates on grain and its products and cottonseed and its products. In further defense it was shown that the rice rates generally from Texas points to New Orleans are the lowest they have ever been; that the rough-rice rates are reasonable *per se*, while the clean-rice rates were forced down lower than a reasonable rate for the purpose of enabling Texas mills to compete with New Orleans mills in southeastern consuming markets. The evidence shows that carriers west of the Mississippi have tried, without success, to induce carriers east of the river to enter into joint rates to the southeast. Failing in this effort the carriers serving Texas, in order to enable the Texas mills to compete with New Orleans in the southeast, established the present clean-rice rates to New Orleans, which are therefore in the nature of proportional rates. As showing that the present clean-rice rates are extremely low, evidence was presented to show that rice usually takes a higher rate than sugar, yet the clean-rice rates in question are actually lower than rates on sugar from New Orleans to Texas points. Furthermore, it was shown that whereas the clean-rice rate from Houston and Texas points east thereof to New Orleans (from 257 to 359 miles) is 15 cents, the rate on clean rice, fixed by the Louisiana commission for points over 125 miles from New Orleans (as are practically all Louisiana milling points), is 14 cents. Thus, Houston, 359 miles from New Orleans, pays a 15-cent rate, while Crowley, La., 167 miles from New Orleans, pays a 14-cent rate, making the ton-mile rate from Houston 8.3 mills as compared with a ton-mile rate of 16.7 mills from Crowley. These facts, the defendants argued, demonstrated that the clean-rice rates from Texas were lower than reasonable rates would be.

While the complaint alleged that the actual effect of this equality in the rates on clean and rough rice was to exclude the New Orleans miller from purchasing rice in Texas, there was no evidence to support this assertion but rather a conclusive answer to it in the form of an exhibit showing that in 1910 there were shipped from Texas points to New Orleans 176,874 bags of rough rice and 128,976 bags of clean rice. Furthermore, it was shown that about 180,000 bags of rough rice are shipped annually from Arkansas to New Orleans, although the rate is 20 cents. It was replied in this connection that since Arkansas has few mills much of its rough rice would move to New Orleans at any rate. But it seems clear that since New Orleans ,ying a rate of 20 cents on much of its rough rice and is actually ceiving more rough than clean rice from Texas points at the exist-

ing rates, New Orleans is not excluded from purchasing Texas rough rice by the existing relation of rates.

A reading of the record makes it apparent that the rates complained of are part of a rate adjustment which has been arrived at after years of competition between markets, and that any change in the present rate would disturb this whole rate situation. As we have seen, to establish a differential by increasing the clean-rice rate to New Orleans would not improve the situation. On the other hand, it seems clear that if the present rough-rice rates from Texas points to New Orleans were reduced 25 per cent, as the complainants ask, they would then be lower than the rates on rough rice fixed by the Louisiana commission from Louisiana points to New Orleans, which are for less than half the distance. This would no doubt result in an immediate reduction of the Louisiana rough-rice rates and in turn further complaint from the Texas mills. Therefore, whether a differential were established by raising the clean-rice rate or lowering the rough-rice rate, numerous other rates would thereby be disturbed.

In view of all the facts and circumstances disclosed by the record we do not find the rough-rice rates complained of to be unduly discriminatory.

The complaint will be dismissed.

No. 4349.

CHAMBER OF COMMERCE OF HOUSTON, TEX., ET AL.

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY ET AL.

Submitted March 8, 1912. Decided April 1, 1912.

The through rail-and-water rates on rice and rice products from Houston to New York, Boston, Baltimore, Philadelphia, and Providence, via Galveston, not found to be discriminatory as compared with the corresponding rates from New Orleans, Galveston, and other Texas points, or as compared with corresponding rates on other commodities from Houston.

S. H. Cowan for complainants.

H. A. Scandrett and *F. C. Dillard* for Galveston, Harrisburg & San Antonio Railway Company; Southern Pacific Company; Texas & New Orleans Railroad Company; and Atlantic Steamship Line.

T. J. Norton and *A. C. Fonda* for Gulf, Colorado & Santa Fe Railway Company and Gulf & Interstate Railway Company.

J. E. W. Fields for Beaumont, Sour Lake & Western Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner:*

A large part of the rice milled in Texas is shipped to the north Atlantic ports, and while some of this moves all rail the bulk of it moves by rail and water via Galveston. Texas milling points for many years have enjoyed joint through rates on rice and rice products to these ports which are based on differentials over the water rates from Galveston. The following table shows the principal Texas milling points and their distance and differentials on carload shipments to New York via Galveston.

Name.	Distance from Galveston.	Through carload rate to New York via Galveston per 100 pounds.	Differential over Galveston per 100 pounds.
	Miles.	*Cents.*	*Cents.*
Houston	49	25	5
Beaumont	76	28	8
Bay City	84	30	10
Port Arthur	98	30	10
Orange	99	28	8
Eagle Lake	99	30	10
Raywood	99	30	10
El Campo	125	30	10
Gondo	148	30	10
Markham	153	30	10

Prior to August 1, 1911, Houston enjoyed a differential of 3 cents over Galveston, but on that date the carriers increased the differential to 5 cents. The joint through rates on carload and less-than-carload shipments to New York, Boston, Philadelphia, Baltimore, and Providence, based on this differential, are herein attacked as unreasonable and discriminatory against Houston and against rice as a commodity and in favor of New Orleans, Galveston, and other Texas milling points to the extent of the increase.

For convenience in discussing the issues involved we shall refer only to the through rates to New York, since that is the principal point of shipment involved, and that rate is typical of the others, and we shall also refer only to carload rates since the considerations affecting these rates apply equally to the less-than-carload rates.

The carriers aim to justify the advance on the ground that it was made in compliance with the order of this Commission in Investigation and Suspension Docket No. 34. 21 I. C. C., 124. Furthermore, the carriers declare that the former Houston differential of 3 cents over Galveston, which we are now asked to order back, was discriminatory as against the Texas milling centers which had a 10-cent differential over Galveston and that the present 5-cent differential was adopted as the result of the repeated demands by these Texas mill cities as well as in compliance with the aforementioned order of the Commission.

A clear understanding of the present case requires a review of Investigation and Suspension Docket No. 34. The facts leading up to that case were as follows: Previous to 1909 all Texas milling centers except Houston paid a differential of 10 cents over Galveston. In that year the protest of Beaumont to the carriers secured for it a reduction of its differential to 6 cents over Galveston. Orange, being a rival of Beaumont and having always enjoyed the same rate, at once complained to the carriers, and, in order to place these cities on an equality again, the carriers increased the Beaumont rate from 26 to

28 cents and reduced the Orange rate from 30 to 28 cents. Beaumont, it seems, did not object to being placed on a parity with Orange, but it did complain to this Commission that this increased rate was discriminatory as compared with Houston, because it made its differential over Houston 5 cents, instead of 3 cents, as it had recently been. This complaint was dealt with in Investigation and Suspension Docket No. 34.

As stated in complainants' brief in the present case, the question raised in Investigation and Suspension Docket No. 34 was not as to the reasonableness of the Beaumont and Orange rates nor as to their relation to the New Orleans or Galveston rates, but simply as to the relation of the rates from Beaumont and Orange compared with the rates from Houston. In deciding that case the Commission ordered (1) that the carriers abstain from charging their "present rates" from Beaumont and Orange; (2) that they maintain the same rates from Orange that are contemporaneously in effect from Beaumont; (3) that they establish rates from Beaumont and Orange "which shall not exceed by more than 3 cents" the rate contemporaneously in effect from Houston. The carriers now contend that since the rate in force from Beaumont at the time of the order was 26 cents, they were not free, in view of the first provision of the order, to establish the differential ordered by fixing the Beaumont and Orange rates at this amount, and the only alternative was to adopt the suspended rates of 28 cents from Beaumont and Orange and then raise the Houston rate from 23 to 25 cents. We do not agree that the order necessarily had this effect. In view of the second part of the order, it seems clear that the "present rates" referred to were the Beaumont rate of 26 cents and the Orange rate of 30 cents, considered collectively, and by making the rates from Beaumont and Orange both 26 cents, the carriers would have complied with the order to abstain from charging their "present rates" of 26 cents from Beaumont and 30 cents from Orange. The construction placed upon the order by the carriers is possible, but it is not a necessary construction, and, in the light of the opinion, it is not the proper construction. We believe a reasonable reading of the order as a whole makes it clear that the carriers were free to establish the required differential either by lowering the Beaumont and Orange rates or increasing the Houston rates. Accordingly, if the construction of the order adopted by the carriers were the only justification for the increase in the Houston rates, we should order them reduced.

The real problem now presented is whether Houston should have a lower rate in relation to the other Texas milling cities and to New Orleans. The reasonableness of the present through rates is not questioned. Nor is any complaint made of the differential of 3 cents

which Beaumont and Orange enjoy over Houston. Houston relies on the fact that its differential over Galveston has for many years been 3 cents, and that since this is still the fifth-class differential it should continue as the differential on rice. It seems clear, however, that Houston has no just basis for complaining of its rates as compared with the New Orleans rates, since it has an additional rail haul of 49 miles and it is much farther by sea than New Orleans. Besides, as compared with Louisiana points shipping via New Orleans it has a decided advantage, since they must pay a 10-cent differential over New Orleans. If we consider the relation of the present Houston differentials to those of other Texas cities its complaint seems equally unfounded. If the carriers had complied with the order in Investigation and Suspension Docket No. 34 by reducing the Beaumont and Orange rates to 26 cents, complaint would inevitably have arisen from other Texas milling centers; for if Orange, being 99 miles from Galveston, had been given a rate of 26 cents it would clearly not be defensible to maintain 30-cent rates from Port Arthur, 98 miles, Eagle Lake, 99 miles, and Raywood, 99 miles from Galveston. Confronted with this situation, the establishment of a 28-cent rather than a 26-cent rate from Beaumont and Orange was, we believe, the proper action for the carriers to take. The attendant increase in the Houston rate establishes the relation between these cities and Houston which the Commission after careful investigation found to be proper. Viewing the present Houston rate as a part of the adjustment of rates from all the Texas milling points, we do not find that it in any way discriminates against Houston.

The contention that rice as a commodity was discriminated against by the increase complained of is based on the fact that the fifth-class differential continues to be 3 cents from Houston while the differential on rice, which is a fifth-class commodity, is advanced to 5 cents. The record shows, however, that as to certain other commodities of large tonnage the differential is not observed. For example, the rate on compressed cotton from Houston to New York is 6 cents over the Galveston rate. Prior to 1895 the fifth-class differential from Houston to Galveston was 5 cents. In that year the Texas Commission reduced this differential to 3 cents and the carriers then adopted it as a factor in the through rates via Galveston to the Atlantic Seaboard. It was, therefore, in origin not a voluntary rate, and as compared with the Texas distance scale fifth-class rate of 18 cents, or with the special distance scale fifth-class rate of 12 cents applying between Houston and Galveston, this differential is very low. The through rates now complained of are equal to the combination of the local commodity rate and the water rates from Galveston. The Commission in Investigation and Suspension Docket

No. 34 expressed the view that this commodity rate was an "extremely low local rate" and nothing in the present record changes our view. It follows that a differential equal to this rate may well be permitted and when such a differential is made in an effort to comply with an order of this Commission and with the bona fide purpose of correcting a discrimination in the manner best calculated to put the rates from all Texas milling cities in fair relation to each other, we see no reason for disturbing it.

We have not considered the reasonableness of any of the through rail-and-water rates involved in this adjustment and we make no finding thereon.

The complaint will be dismissed.

No. 4024.

MUTUAL RICE TRADE & DEVELOPMENT ASSOCIATION OF HOUSTON

v.

INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY ET AL.

Submitted March 8, 1912. Decided April 8, 1912.

The rates on clean rice from Texas milling points to the southeast, to central freight association territory, to Illinois, and to the Pacific coast are complained of as discriminatory compared with the corresponding rates from New Orleans; *Held*, That the rates to central freight association territory, to Illinois, and to the Pacific coast are not found to be discriminatory, but those to designated points in the southeast to which any-quantity rates apply from the Mississippi River are found unreasonable and discriminatory and the carriers ordered to establish through carload rates which shall be 5 cents less than the lowest combination of locals contemporaneously in effect to and from a Mississippi River gateway.

S. H. Cowan for complainant.

T. J. Freeman, *Henry G. Herbel*, and *Horace Booth* for International & Great Northern Railroad Company and Texas & Pacific Railway Company.

M. P. Callaway for Cincinnati, New Orleans & Texas Pacific Railway Company; New Orleans, Mobile & Chicago Railway Company; New Orleans & Northeastern Railroad Company; and other carriers.

Fred H. Wood for Beaumont, Sour Lake & Western Railway Company; Chicago & Eastern Illinois Railroad Company; New Orleans, Texas & Mexico Railroad Company; St. Louis & San Francisco Railroad Company; and other carriers.

F. C. Dillard and *H. A. Scandrett* for Houston & Texas Central Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; Houston East & West Texas Railroad Company; and other carriers.

J. S. Hershey and *A. C. Fonda* for Gulf, Colorado & Santa Fe Railway Company; Gulf & Interstate Railway Company of Texas; and Atchison, Topeka & Santa Fe Railway Company.

Nelson W. Proctor for Louisville & Nashville Railroad Company.

Martin L. Clardy and *Henry C. Herbel* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

George H. Terriberry for New Orleans Board of Trade, Limited, intervener.

H. H. Haines for Galveston Commercial Association.

Report of the Commission.

Lane, *Commissioner:*

The rice crop of the United States, which last year produced over 620,000,000 pounds of commercial rice, almost, if not entirely, equals the domestic consumption. The great industry involved in the raising, milling, and marketing of this product has grown up within this generation. A small part of this product is raised in the Carolinas and in Mississippi, but the bulk of it is produced in what is known as "the rice belt," which extends from the Mississippi River to about 150 miles west of Houston, Tex., and from the Gulf along the west side of the Mississippi River to the northern boundary of Arkansas. In Louisiana approximately 371,200 acres, in Texas 264,745 acres, and in Arkansas 60,000 acres, are devoted to this crop. New Orleans from the beginning of the industry in the rice belt has been the leading milling and marketing point for rice. But numerous milling centers have sprung up in other parts of Louisiana and in Arkansas and during the past 10 years the rapid extension of rice culture in Texas has been accompanied by the establishment of 22 rice mills in that state and the growth of several milling centers, of which Houston is the largest.

The complaint in this case is brought by the milling interests of Houston and the Texas mill cities against all the railroads doing business out of Houston and New Orleans and their connecting lines extending to the southeast, central freight association territory, Illinois and Wisconsin territory, western trunk line territory, trans-Missouri territory, and the Pacific coast territory. Attack is made on the rates on clean rice from Houston and other Texas mills to the southeast, to central freight association territory, to Illinois, and to the Pacific coast as unreasonable and as discriminatory compared with corresponding rates from New Orleans. In the course of the hearing the complainant made little attempt to prove that the rates from Texas points were unreasonable *per se*, but undertook especially to show the unfairness of the adjustment of rates from Texas milling points as compared with rates from New Orleans to the territories named. The New Orleans Board of Trade intervened on behalf of the millers and traders of that city and contended that the present adjustment is in favor of Houston and to the disadvantage of New ...ns.

...blishing the rates now attacked the carriers have divided ...try into rate territories with a distinct rate adjustment ...ng to each. To the southeast the through rates are combina-

tion rates made of a local carload rate of 15 cents from Houston and Texas points east thereof or 19 cents from Texas points west thereof to New Orleans, and in most instances a local any-quantity rate from New Orleans. To central freight association territory (east of the Illinois-Indiana state line) there are joint rates applying from Houston which are 10 cents on carloads and 20 cents on less than carloads higher than the corresponding rates from New Orleans. To Illinois and Wisconsin territory the rates from Houston are 5 cents on carloads and 10 cents on less-than-carload lots higher than from New Orleans. To the Pacific coast the rates from Houston are the same as from New Orleans. To the seaboard territory and to trans-Missouri territory the Texas rates are also adjusted in relation to the New Orleans rates, but the complaint attacks only the above rate adjustments. It is apparent that the adjustments to these territories are fundamentally different and the basis of complaint against them is in each case different. We shall therefore consider separately the relations of rates applying to each territory.

1. The rates from Texas points to the southeast are attacked especially on the ground that the through rates are merely combination rates rather than joint rates less than the sum of the locals into and out of New Orleans. The complainant urges that while a through combination rate may often be justified it is unwarranted here, because rice shipped from Texas to the southeast is carried through in the same car, so that terminal charges which would arise on the two local hauls are avoided. Furthermore, it is contended that the combination rates are unfair to Texas points because the rates from New Orleans to points in the southeast on which the through rates are based are any-quantity rates which New Orleans can take advantage of, but which are of no value to Texas shippers because it is commercially possible to ship only in carload lots from Texas to the southeast. That the relation of the rates from Texas and from New Orleans to the southeast was prejudicial to the former was evidenced, the complainants urged, by the testimony tending to show that Houston and Texas millers in spite of repeated efforts were unable to compete with New Orleans millers in supplying this territory, which the record tends to show is the best rice-consuming territory in the United States. The complainant asks, therefore, that a joint through rate be established from Texas points to points in the southeast which shall be not more than 5 cents on carloads above the rates from New Orleans.

The defendant carriers operating in the southeast aimed to rebut the complainant's case by evidence showing that the local rates from Texas to New Orleans and from New Orleans to southeastern points were very low. The local rate of 15 cents from Houston and Texas points east thereof and the 19-cent rate from points west

of Houston to New Orleans were declared to be in the nature of proportional rates adopted in order that the Texas mills might compete with the interior Louisiana mills which have a 14-cent rate to New Orleans. Evidence was offered to show that rates from New Orleans to points in the southeast were originally forced to a very low level by water competition, which even now continues either actually or potentially to many points accessible to gulf and river boats. In some cases also the rates were originally forced down by the market competition of Georgia and Carolina rice coming in from the east and also by direct competition between rail carriers. Evidence was also offered to show that the combination of these locals applying from Texas to the southeast was not an unreasonable through rate *per se* and that the making of a through rate by combination based on a river gateway is not an exceptional practice, but rather is the long-recognized method of fixing practically all class and commodity rates from western and official classification territory into southern classification territory. The defendants operating in southeast territory further urged that since none of their lines extended west of the Mississippi River, and they were parties to no joint rates west of the river, they could not be charged with discrimination against Houston. On behalf of New Orleans millers it was urged that that city as a port, and also because of its proximity to the southeast, had natural advantages over the Texas cities which are located at interior points from 250 to 450 miles more distant, and that it would be unjust to equalize such natural advantage by the establishment of the differential requested.

2. The rates from Texas points to central freight association territory and to Illinois were complained of on the ground that the hauls from Texas and from New Orleans were so nearly equal and the conditions were so similar that the rates should be the same. The evidence tended to show that this territory was supplied with rice by New Orleans, chiefly, and that Texas rice millers marketed their product here only to the extent that they could afford to absorb the differential against Texas. As emphasizing the injustice of the adjustment to this territory, it was pointed out that the less-than-carload rates from New Orleans to central freight association territory were 5 cents less than the carload rates from Texas, so that the Texas dealers could develop little jobbing business on a profitable basis. The defendants contended that the rates from New Orleans had been forced by water competition up the Mississippi and Ohio rivers, and that consequently the rates from New Orleans were unduly low and were no criterion by which to fix the rates from Texas. It was also urged that the lesser mileage from New Orleans than from Texas points justified the present difference in the rates.

3. The rates from Texas points to the Pacific coast were attacked only argumentatively. The complainant urged that if New Orleans was to have lower rates to the southeast than Texas points on account of its geographical location, then Texas points should, for the same reason, have lower rates than New Orleans to the Pacific coast points. The complainant requested that Texas points be given a differential of 5 cents under the New Orleans rate, so that the Texas mills might enjoy that same advantage from their proximity to the Pacific markets that New Orleans would enjoy to the markets of the southeast by the proposed differential to that territory. The evidence showed that much of the domestic rice consumed in the Pacific coast states came from Texas, but the complainant insisted, nevertheless, that it was unfair to Texas that a principle of rate making should be applied when it favored New Orleans and disregarded when it would favor Texas mills. The defendants interested in the traffic to the Pacific coast aimed to justify these rates on the ground that they had followed the established practice in constructing rates to the Pacific by blanketing both ends of the haul, or, to be more specific, by making the rice rates the same from all points in Texas and Louisiana to points in California, Oregon, and Washington.

A careful examination of the relative rates applying to Illinois and to central freight association territory does not disclose that the rates from Texas points to these territories are discriminatory. New Orleans enjoys natural advantages entitling it to better rates to these points, and we can not conclude from this record that the existing carload differentials in favor of New Orleans of 5 cents to Illinois and 10 cents to central freight association territory make an undue allowance for this difference. New Orleans is on the average about 150 miles nearer to Illinois points and about 200 miles nearer to central freight association territory points than are the Texas milling centers. We therefore find no warrant in the present record for disturbing these rates.

Turning to the Pacific coast adjustment we find that a characteristically different theory of rate structure obtains. Instead of due allowance being made in these rates for the fact that Houston is 350 miles nearer the Pacific coast than New Orleans, we find that these rice rates, like all other rates to the Pacific coast, are blanketed, so that all Louisiana and Texas points have the same rate to all coast markets. The suggestion that if the distance between Houston and New Orleans is ignored in constructing rates to the Pacific coast then it should likewise be ignored in making rates to the southeast, overlooks the fact that all the distances from points in the rice belt to Pacific coast points are much greater than the distances from points in the rice belt to southeastern points, and it is fundamental that

large blankets are justified for long distances which would not be for shorter distances. A further justification for this difference in rate making from the rice belt is that in hauls to the Pacific coast only one carrier is involved, while in all hauls from Houston to the southeast at least two carriers participate. In this case the average haul from the rice belt to the coast approximates 2,000 miles, and in view of the length of this haul and the absence of any testimony as to the reasonableness of these rates, we do not find that this equality of rates for unequal hauls is in violation of the act.

The relation of rates to the southeast from Texas points and New Orleans, respectively, presents a still different situation. The rates from Texas points are published as through rates, but they are in fact combination rates based on New Orleans or other Mississippi River gateway. Here, again, New Orleans is clearly entitled to some advantage in rates, owing to its greater proximity to the consuming markets. But the question arises whether the present difference of 15 or 19 cents in the carload rates from Texas points and from New Orleans to the southeast is warranted by this consideration. The record tends to show that each of the local rates included in the through rates has been lowered by competition either of markets or of other carriers, and from this it was argued that the combination of these rates made a low through rate. The local rates from New Orleans are in most instances any-quantity rates. The record shows that rail shipments from Texas points to the southeast are made only in carload lots. In *Duncan & Co. v. N. C. & St. L. Ry.*, 16 I. C. C., 590, it was held that where any-quantity rates were in effect the Commission would not order the establishment of a differential between the rates applying to carload and less-than-carload shipments. In this case, however, the situation is entirely different. We are now dealing with a combination carload rate, the chief factor of which is an any-quantity rate. While this any-quantity rate considered by itself and as affecting New Orleans shippers alone may be entirely reasonable, we do not believe that a through carload rate from Texas points to the southeast may fairly be based upon it. When a carrier instead of providing a carload and less-than-carload rate provides only an any-quantity rate the presumption is that it is higher than a carload rate and lower than a less-than-carload rate would be. The carriers in this case undertook to rebut this presumption by alleging that the any-quantity rates were as low as carload rates would be. But examination of the tariff shows that, generally speaking, the carload rates that do apply from the river to southeastern points are relatively lower than the any-quantity rates. We are therefore satisfied that these any quantity rates are not as low as carload rates should but even if they were the fact remains that the New Orleans

shipper of less-than-carload lots gets more service for a given rate than the Texas shipper who always ships in carloads at the same rate. A further reason why the through rate from Texas should be lower than the combination of locals is that in the case of a through shipment of rice from Texas, as appears from the record, practically no terminal service is performed at New Orleans, while in the case of a local shipment in and a local shipment out such service would be substantial. In view therefore of difference in the service rendered and also difference in the cost of the service to the carriers in handling through shipments from Texas points, we believe the through rate in this case should be lower than the sum of the locals.

To sum up our conclusions, we do not find the rates from Texas points to central freight association territory (east of the Illinois-Indiana state line) to Illinois or to the Pacific coast to be discriminatory as compared with the corresponding rates from New Orleans, but we do find that the through rates, of which any-quantity rates are factors, from Texas points to points in the southeast are unreasonable and discriminatory, and that joint carload rates from Texas milling points to this territory, at least 5 cents less than the lowest combination of locals contemporaneously in effect to and from Missisippi River points would be just and reasonable.

The complaint was directed against all rice rates from Texas points to southeastern territory which was defined as that territory east of the Mississippi and south of the Ohio Rivers. We shall limit our order, however, to rice rates applying from Texas points to points in this territory as to which any-quantity rates from Mississippi River points are named in M. P. Washburn's tariff No. 7, I. C. C. No. 78.

An order will be entered accordingly.

No. 4240.

E. M. DUPRE COMPANY ET AL.

v.

BUFFALO, ROCHESTER & PITTSBURGH RAILWAY COMPANY ET AL.

Submitted January 20, 1912. Decided April 8, 1912.

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1. Rates on apples, potatoes, cabbage, and onions from Rochester, Albion, and Appleton, N. Y., found to unjustly discriminate against Columbia, S. C., in favor of Augusta, Ga. Carriers required to apply to Columbia rates not higher than contemporaneously charged to Augusta.
2. The facts of record held insufficient to justify an order reducing minimum weight of 24,000 pounds on grapes to Columbia from points in New York state.

Rembert & Monteith for complainants.

M. P. Callaway for Norfolk & Western Railway Company; Seaboard Air Line Railway; Richmond, Fredericksburg & Potomac Railroad Company; and Atlantic Coast Line Railroad Company.

W. J. Peebles for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

MCCHORD, *Commissioner:*

Complainants are wholesale fruit and produce merchants of Columbia, S. C., and allege that they are unjustly discriminated against in favor of Augusta, Ga., in the carload rates on apples, potatoes, cabbage, and onions from Rochester, Albion, and Appleton, N. Y., in violation of sections 3 and 4 of the act to regulate commerce. The minimum weight of 24,000 pounds on grapes from the same territory to Columbia is also attacked under section 1 and will be considered independently.

To Columbia and Augusta, Rochester takes the New York City rates, and Albion and Appleton a differential of one cent over Rochester. As there is no attack upon this differential, Rochester will be taken as the representative point of origin. The class rates from this territory are the same to either Columbia or Augusta, and in the absence of exceptions southern classification governs, and rates les, potatoes, cabbage, and onions sixth class. To Columbia the h-class rate of 42 cents applies; to Augusta, a commodity rate

of 34 cents is effective. Augusta is situated on the Savannah River and Columbia on the Santee. Boats ply both rivers, carrying cargoes which have been transported by water from New York to Savannah on the one hand and Georgetown, S. C., on the other. Traffic also moves by boat from New York to Charleston, thence by rail to Augusta or Columbia. That the effect of this water competition is reflected in the class rates to these points is contended and admitted; but if competitive conditions are so similar as to justify like class rates to both destinations, the natural inquiry is, Why should these commodities be given lower than the class rate to Augusta, while the class basis is allowed to obtain at Columbia. Defendants' answer to this was that the water competition to Augusta was greater than to Columbia, but how much greater or the nature of its augmentation was not explained. Some reference was also made to market competition created by the carriers reaching Augusta from the west, but with neither of these explanations are we impressed; nor indeed was the principal witness for defendants, who frankly stated that in his opinion the rates on these commodities to Augusta were lower than competitive conditions made necessary. Onions and potatoes are largely transported inland to Augusta and Columbia by water, but apples and cabbage, on account of their perishable nature, generally move inland by rail. The brief of the southern lines announces the intention of defendants to place Augusta and Columbia on a parity by the publication to Augusta of a 37-cent rate from Rochester and 38 cents from Albion and Appleton, and to Columbia, 38 cents from all three points. The difference in the proposed rates from Rochester is due to the erroneous assumption that to Columbia Rochester now takes a differential of one cent over New York, whereas it really takes the New York rate. Defendants' admission, considered in connection with the facts of record, convinces us that there is no such dissimilarity of conditions as justifies a higher rate to Columbia than to Augusta on the commodities and from the points of origin here involved. We therefore find that the present rates do and have unjustly discriminated against Columbia, to which point the rates to be hereafter charged should not exceed the rates contemporaneously applied to Augusta. This disposition of the case renders unnecessary a consideration of the violation of section four.

Complainants have asked for reparation upon all shipments received by them since July 10, 1911, the date upon which the complaint was filed. Augusta and Columbia compete in intermediate territory in the sale of the articles comprising the subject matter of this complaint; and as the distributing rates from both cities are constructed upon the same mileage scale, the difference in the inbound rates in favor of Augusta has resulted in damage to complainants in

the amount of such difference applied to the shipments they have received. On this basis reparation will be awarded upon satisfactory proof of shipments made by complainants from Rochester, Albion, and Appleton to Columbia since July 10, 1911.

As to the reasonableness of the minimum weight on grapes, in baskets, the question is practically one of fact, complainants alleging that 24,000 pounds can not be loaded into a car without serious damage to the bottom tier, and defendants contending to the contrary. Twenty-four thousand pounds can be, and has been, frequently loaded to points in the east, south, and west. Physically, therefore, it is easily possible, but the weight of the testimony is to the effect that cars so loaded arrived with the bottom tier to a greater or lesser extent crushed. In the southern classification, grapes are rated third class, minimum 20,000 pounds; in official classification third class, minimum 24.000 pounds, or second class, minimum 20,000 pounds. Southern classification governs from the points of production to Columbia, subject to the exception that the minimum weight on grapes shall be 24,000 pounds, which minimum has been in effect for several years. The third-class rate to Columbia is 79 cents, which, at the 24,000-pound minimum, yields a per-car revenue of \$189.60; at the same minimum, and the 66-cent commodity rate effective for a short period in 1910, \$158.40. The minimum of 20,000 pounds in connection with the second-class rate of 91 cents would make a per-car charge of \$182. Complainants expressed their unwillingness to pay a higher rate to procure a lower minimum and contended for a weight of 20,000 pounds at the third-class rate. No evidence was introduced bearing upon the reasonableness of the rate or the per-car charge, and any order we might make could be directed only at the minimum weight without reference to the rate per 100 pounds. The continuous increase in the volume of traffic has necessitated the construction of cars of greater capacity, and we are reluctant to reduce a minimum weight unless it may be done with substantial justice to all parties. It is true that market conditions frequently dictate the quantity of a given commodity a jobber may handle, but it is often to the shipper's interest to have a high minimum with a low rate, and as the question of the rate is not before us we do not feel warranted, upon this record, in ordering defendants to cease applying the existing minimum.

An order in accordance with the foregoing will be issued.

No. 2807.

C. E. FERGUSON SAWMILL COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.

Submitted December 12, 1910. Decided April 1, 1912.

In *Ferguson Sawmill Co.* v. *St. L., I. M. & S. Ry. Co.*, 18 I. C. C., 396, the Commission found the rates on cypress lumber from Little Rock and Woodson, Ark., to points in Oklahoma, Kansas, and Missouri to be unreasonable. The present proceeding involves a supplemental complaint assailing the rates from the same points of origin to a large number of destination points to the northwest of Arkansas on the lines of various carriers; *Held*, That the rates complained of are unjust and unreasonable. Reparation awarded.

C. E. Ferguson for complainant.

Herbert J. Campbell for Missouri Pacific Lines.

A. B. Enoch for Chicago, Rock Island & Pacific Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cypress lumber at Woodson, Ark., 17 miles southeast of Little Rock, on the St. Louis, Iron Mountain & Southern Railway. The original petition in this case was filed August 31, 1909, alleging that the rates charged for the transportation of cypress lumber from Little Rock and Woodson to the points on the lines of the St. Louis, Iron Mountain & Southern Railway, to the northwest of Little Rock and Woodson, were unjust and unreasonable and unduly prejudicial. The Commission found that the rates complained of were unreasonable and entered its order prescribing maximum rates. It was stated at the hearing on the original petition that complainant had intended to place in issue the reasonableness of the rates to all points on the Missouri Pacific system in Kansas and Nebraska. The Commission's findings, however, related only to rates to points on the line of defendant named in that proceeding. *Ferguson Sawmill Co.* v. *St. L., I. M. & S. Ry. Co.*, 18 I. C. C., 396.

The supplemental petition now under consideration raises issues similar to those involved in the former case, but names as defendants

in addition to the St. Louis, Iron Mountain & Southern Railway, the Missouri Pacific Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Rock Island & Pacific Railway Company; Missouri, Kansas & Texas Railway Company; St. Louis & San Francisco Railroad Company; and Union Pacific Railway Company, which carriers are parties to southwestern lines tariff 50–B.

It was stated by counsel for defendants that the rates to points on the Missouri Pacific system would have been adjusted in accordance with the Commission's previous decision had not defendants desired to place before the Commission additional evidence to show that the original conclusions of the Commission were not justified. The principal point brought out in the present proceeding by defendants relate to the competition which complainant has to meet in the sale of cypress lumber and the geographical location and production of white cypress in this territory. It is averred that the record in the previous case did not fully set these matters out, and that the facts relating thereto are such as to justify the rates which have been established by the carriers from Little Rock and Woodson to the destination points named.

It will not be necessary to recite again at length the facts and circumstances which led the Commission to reach its former conclusion, as they are fully set forth in the original *Ferguson case*, *supra*. It was there shown that by a series of readjustments in the rates involved the rate from Little Rock and Woodson to points in eastern Kansas had been advanced from 16 cents to 24 cents. The Commission said:

> At the same time rates on cypress from Memphis, Tenn., Helena, Ark., and other towns north of the Arkansas River to points in Kansas formerly taking the 16-cent rate were advanced only 2 cents. The result is that Woodson and Little Rock, with a 24-cent rate on cypress to points in eastern Kansas, are in competition with producing points taking an 18-cent rate, though more distantly located from the markets. The Memphis rate is blanketed westerly from the Mississippi River as far as Wynne, Ark. From Wynne the rate to points in eastern Kansas increases, and in a distance of 98 miles between Wynne and Little Rock it becomes 24 cents. Traffic from points east of Little Rock is routed through Little Rock. After leaving Little Rock and proceeding westward the rate drops off until Fort Smith is reached, where it is 17 cents. There is therefore no attempt to maintain a blanket rate throughout this stretch of 250 miles; but starting with a 24-cent rate from Little Rock to points in eastern Kansas, the rate is graded down to 18 cents for points between Wynne and Memphis, and to the westward until it reaches 17 cents at Fort Smith.

Our finding in that case was that the rates on cypress lumber in carloads from Little Rock and Woodson to points in Oklahoma, , and Missouri, located on the lines of the defendant, were

unjust and unreasonable, and new rates were prescribed, which were the same as the rates from the Memphis territory to said destination points.

In *Freeman Lumber Co.* v. *St. L., I. M. & S. Ry. Co.*, 19 I. C. C., 348, the Commission prescribed rates on cypress lumber from Gleason, Ark., a station on the Iron Mountain road north of the Arkansas River and 35 miles northwest of Little Rock to Kansas City, and other points in that territory, which rates are in substantial accord with the rates prescribed in the prior report in this case.

In its report in the *Ferguson case*, *supra*, the Commission indicated that its investigations in that case disclosed that the rates complained of were unreasonable to points on the connections of the Iron Mountain, but specific rates were prescribed only to stations in Missouri, Oklahoma, and Kansas on the lines of the Iron Mountain, the sole defendant in that case. In the present proceeding complainant has made parties defendant a number of carriers, parties to the southwestern lines tariff, and prays for the establishment of rates to stations named in a number of tariffs to which specific reference is made.

At the hearing counsel for defendants St. Louis, Iron Mountain & Southern Railway Company and Missouri Pacific Railway Company stated that, in case the Commission found the rates complained of to be unjust and unreasonable, it should take into consideration the fact that the rate on cypress lumber prior to the time of the advance complained of was 2 cents per 100 pounds higher from Woodson and other points south of the Arkansas River than from Gleason and other points north of the Arkansas River. The record in this case and the tariffs on file with the Commission do not justify this statement. An examination of the tariffs shows that the rate on lumber, except yellow pine, from Little Rock, Woodson, and Pine Bluff to Kansas City was 16 cents per 100 pounds, and the rate from points south of Little Rock and south of Pine Bluff was 2 cents higher. The record further shows that this was the rate generally understood to be in force by both shippers and the carriers in that territory, and that traffic from Woodson was charged the rate of 16 cents and not 18 cents, as contended by defendants.

Upon consideration of all the facts and circumstances appearing of record we see no reason to deviate from the conclusions announced in the former case, and we find that rates of defendants on the traffic in question are unjust and unreasonable. On the basis of our findings the rate from Little Rock and Woodson to Kansas City, Mo., which is now 24 cents, should not exceed 18 cents per 100 pounds. An order will be entered requiring the establishment of a rate not in excess of that amount from Little Rock and Woodson to Kansas

City, and the defendants will be expected to adjust their rates to points other than Kansas City upon the basis of the differentials now in force over or under the rate fixed for Kansas City.

We further find that in so far as complainant has paid charges on shipments of lumber from and to the points in question at rates of transportation in excess of the rates herein found to be reasonable, it has been damaged thereby, and reparation will be awarded on such shipments on the basis of our conclusions. Upon the filing of a statement of such shipments showing the necessary facts and the approval thereof by the Commission, an order of reparation will be entered.

No. 3451.

CYRUS C. MATTISON

v.

PENNSYLVANIA COMPANY.

Submitted December 10, 1910. Decided April 1, 1912.

Upon the facts of record it is found that complainant's prayer for an order requiring reestablishment and maintenance of passenger station at Park Manor, Chicago, Ill., should be denied.

Thomas J. Morgan for complainant.

James Stillwell and *R. W. Richards* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of Park Manor, a suburban district of the city of Chicago, Ill., bounded on the north by Sixty-seventh street, on the south by Seventy-fifth street, on the east by St. Lawrence avenue, and on the west by State street. By petition, filed August 4, 1910, he alleges the abandonment by defendant on May 30, 1910, of its so-called Park Manor station, which for 25 years had been maintained at the junction of Keefe and Anthony avenues. Complainant and others are in consequence alleged to have been subjected to the payment of unjust and unreasonable rates, and to undue discrimination and prejudice, in violation of the act to regulate commerce, and particularly sections 1, 2, and 3 thereof. Restoration of the former facilities is sought, and there is a prayer for such further order or orders as the Commission may deem necessary.

Defendant denies the Commission's jurisdiction of the issues raised, and enters denial in general of the allegations of the complaint.

In *Snook* v. *C. R. R. Co. of N. J.*, 17 I. C. C., 375, we dealt with a situation similar in many respects. There the defendant abandoned station facilities which it had maintained for about forty years at Roycefield, N. J., and complainant demanded their restoration, alleging undue and unreasonable prejudice and disadvantage. In disposing of the case we held, following *Jones* v. *St. L. & S. F. R. R. Co.*, 12 I. C. C., 144, that the Commission as an administrative body was not necessarily controlled by the general rule that a tribunal, whose authority is invoked by complaint filed before it, must determine whether the subject-matter is within its jurisdiction before it may consider the merits of the controversy; but that affirmative

relief may not be granted in any case unless jurisdiction over the subject-matter is definitely ascertained. The testimony of record in that case was found insufficient to establish a violation of the act, and the complaint was dismissed.

The present case raises the question of jurisdiction, but presents nothing new or illuminating on that point. We may, therefore, as in the earlier cases, undertake an analysis of the facts to determine whether or not upon the record relief should be granted were the question of jurisdiction definitely settled in the affirmative.

The Pennsylvania Company operates the Pittsburgh, Fort Wayne & Chicago Railway, and the Park Manor station, the use of which has been abandoned, is on the tracks of the latter, about 8 miles southeast of the Pennsylvania Company's union station in Chicago. About 1 mile to the northwest, in the direction of the union station, and within the city limits of Chicago, lies defendant's station, Englewood. Six-tenths of a mile southeast of Park Manor is defendant's Grand Crossing station. All passenger trains which formerly used the station at Park Manor now use the stations at Englewood and Grand Crossing. The tracks of the Lake Shore & Michigan Southern Railway are directly north of and parallel with the tracks of the Pennsylvania Company from Englewood station to the Indiana state line, and the Lake Shore maintains a station at Sixty-ninth street and Keefe avenue, within 100 feet of the site of the former Park Manor station of the Pennsylvania Company. The Lake Shore operates direct, frequent, and regular train service between its Keefe avenue station and all interstate points specifically within the scope of this proceeding, with the exception of East Chicago and Clark Junction, Ind. Prior to the Pennsylvania Company's abandonment of this station some freight and express traffic was handled at Park Manor, but this complaint is confined to passenger traffic.

The average monthly gross earnings of Park Manor station, including milk, express, and freight traffic, both interstate and intrastate, according to the witness for defendant, were as follows:

Year.	Average monthly gross earnings.
1906	$291.68
1907	341.83
1908	282.22
1909	3[illegible]7.65
1910 (first five months)	2[illegible].88

It is claimed that the expenses of the station would be materially increased were it to be reconstructed and equipped to meet the changed conditions created by elevation of tracks and other local changes, and that such improvements would necessarily accompany its reopening.

No accurate figures were submitted touching the segregation of the different classes of traffic, or of interstate and intrastate passengers, but the record indicates that not less than 2 nor more than 10 (a relatively unimportant number) interstate passengers in each direction were handled daily at Park Manor station. The population of Park Manor is estimated at about 6,000. Complainant filed a petition signed by about 400 persons, said to be property owners or residents thereof, requesting the reestablishment of the station. Ten witnesses were introduced, of whom only two testified to previous daily use of Park Manor station facilities for interstate journeys and to inconvenience and added expense in connection therewith for street car travel growing out of the abandonment. Others used the station occasionally for interstate journeys, but by far the greater part of the passenger traffic was shown to have been to and from Chicago city points and points within the state of Illinois. The stations at Englewood and Grand Crossing, within fairly convenient walking distances, and from 10 to 20 minutes' ride from Park Manor station, respectively, by street car, have been since used by many, and the Lake Shore station and route are conveniently available for others. Depreciation of real estate values and loss of tenants are set forth as some of the results of the discontinuance of Park Manor station and train service thereat, but the damages so shown are not such as are cognizable by this Commission.

Defendants aver that there is no charter or other obligation resting upon them to maintain this station, and that considerations of more expeditious through train service, safety to life and limb, and economy of operating expenses impelled its discontinuance. Due weight must be given these considerations, but it is not necessary to here enlarge upon the supporting evidence. The immediate question for determination is whether or not complainant has been deprived of reasonable facilities for transportation or subjected to undue prejudice or disadvantage, and whether or not he has shown cause for an order requiring defendant to reopen and maintain Park Manor station for the use of interstate passengers.

The Englewood and Grand Crossing stations are maintained within short distances of most of the residences of Park Manor, and are reasonably accessible; the Lake Shore service is undeniably available to and from nearly all of the interstate points reached by the Pennsylvania Company's trains previously serving Park Manor; and the interstate passenger traffic at Park Manor is shown to have been inconsequential. We are therefore unable to find upon the record that the convenience of the general public has been seriously impaired by the discontinuance of Park Manor station, or that complainant has been subjected to undue prejudice or disadvantage. It follows that the complaint must be dismissed.

No. 3613.

CARSTENS PACKING COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted May 1, 1911. Decided April 1, 1912.

1. Rates charged for the transportation of live stock from California points to Tacoma and Seattle, Wash., not shown to be unjust, unreasonable, or discriminatory.
2. The rules in defendants' tariffs pertaining to single-deck and double-deck cars found to be conflicting. So long as rates are provided for double-deck cars, the tariffs should provide definitely that where a double-deck car is ordered and two single-deck cars are furnished the charges will be assessed upon the basis of the double-deck car ordered.

J. E. Belcher and *Ellis, Fletcher & Evans* for complainant.

A. C. Spencer for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the manufacture of packing-house products at Tacoma, Wash. Its petition, filed October 24, 1910, alleges that the rates charged by defendants for the transportation of sheep and cattle from California points to Tacoma and Seattle, Wash., and the rules pertaining to the shipment of sheep in double-deck cars are unjust, unreasonable, and unduly discriminatory. Reparation is asked.

At the hearing the pleadings were amended by substitution of the Oregon-Washington Railroad & Navigation Company as defendant in place of the Oregon & Washington Railroad Company. There was stipulated into the record the record in the Commission's dockets Nos. 3602 and 1818. Both of these cases involve live-stock rates on the lines running to and from Portland, Tacoma, and Seattle.

It is set forth in the petition that during the months of April and May, 1910, complainant desiring to ship sheep from certain points on the line of defendant Southern Pacific Company in California to Tacoma via the lines of defendants, in each instance ordered of defendant Southern Pacific Company double-deck cars for the transportation of said sheep; that in each instance single-deck cars were furnished and charges assessed on the basis of single-deck

cars; that defendant published rates on sheep in single-deck cars from California points to Stockdale and Portland, Oreg.; that under the heading "double-deck cars" the tariff provided:

The Southern Pacific Company does not own any double-deck cars. Double-deck cars of other carriers, however, are delivered to this company from time to time; and in such event this company will furnish such double-deck cars, when convenient for it to do so, and will charge for same when loaded with sheep, goats, or calves 170 per cent of the rate provided for single-deck cars of the same length. If double-deck cars can not be furnished when ordered, but in their stead single-deck cars are furnished, the rate provided for the cars used will be charged.

Under the heading of "special rules" this defendant's tariffs contain the following:

Owing to the limited number of double-deck stock cars in service on the Southern Pacific Company lines in Oregon, this carrier reserves the right to furnish at its own convenience two single-deck stock cars in place of each double-deck ordered by shipper, and to charge therefor on the basis of double-deck cars so ordered.

The special rule above quoted is in direct conflict with the last sentence of the general rule first above quoted. Under the general rule where double-deck cars are ordered and single-deck cars are furnished instead, the rate provided for the cars used is charged. Under the special rule where two single-deck cars are furnished the charge therefor would be on the basis of a double-deck car or 170 per cent of the single-deck car rate.

It is well known that single-deck stock cars are available for shipments of lumber, coal, and other commodities, while double-deck cars can not be so used to good advantage. Double-deck cars are not, therefore, of such general utility as are single-deck cars.

Following the general conclusion recently reached in *Noble* v. *B. & O. R. R. Co.*, 22 I. C. C., 432, it is our view that so long as these defendants have provisions in their tariffs for the use of double-deck cars, the tariffs should provide that where a double-deck car is ordered and two single-deck cars are furnished charges will be assessed on the basis of the rate provided for the double-deck car ordered. The tariffs should be brought into conformity with this conclusion.

It is alleged that all the rates, rules, and regulations of said Southern Pacific Company pertaining to the shipment of sheep in single-deck cars are unjust, unreasonable, and discriminatory; "that a reasonable rate on sheep in double-deck cars from California points to Tacoma would be a through rate which does not exceed 50 per cent of the present rate on cattle."

In support of its assertion that the rates complained of are unjust and unreasonable complainant uses for a basis of comparison the rates on similar traffic on other Pacific coast lines of railroad. The testimony of defendants is that the rates referred to for comparison are

not applied to traffic which moves under substantially similar circumstances and conditions to the traffic involved in the complaint.

Formerly the fresh-meat rate from San Francisco to Tacoma was a commodity rate of 64 cents. That rate was canceled, but the rating under the western classification is third class. The third-class rate from San Francisco to Portland is 41 cents and the third-class rate from Portland to Tacoma is 23 cents, making 64 cents, the same as originally published as a commodity rate. On a 36-foot car from San Francisco to Portland the rate on cattle would be $120.95; on sheep, double-deck cars $155.46, single-deck cars $91.45; and fresh meat, 25,000 pounds at 41 cents plus $50 refrigeration, $152.50. An exhibit filed by defendant shows that the rates are generally lower to Portland on both cattle and sheep than from similar distances into San Francisco, although the operating conditions are more favorable to the San Francisco movement than over the Shasta route to Portland.

Upon the whole record it does not appear that the rates assailed are unjust or unreasonable for the service rendered, nor does it appear that they are unduly discriminatory. When defendants shall have made their rules concerning single and double deck cars conform to the conclusions announced herein, an order will be entered dismissing the complaint.

No. 3926.

E. RICKARDS

v.

ATLANTIC COAST LINE RAILROAD COMPANY.

Submitted July 7, 1911. Decided April 1, 1912.

Rates charged for the transportation of mine-prop logs from points in North Carolina to Norfolk, Va., found to have been unjust and unreasonable in so far as they exceeded the rates contemporaneously applied to saw logs. Reparation awarded.

Claude W. Owen and *John R. Walker* for complainant.
Frank W. Gwathmey for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, who is located at Norfolk, Va., purchases logs in North Carolina just beyond the Virginia border, and ships them to Norfolk, whence they are distributed as mine props in the anthracite coal regions of Pennsylvania. They pass through Norfolk without unloading. The transportation to Norfolk is over the line of the defendant, and for this service rates of 3 cents and 3½ cents per 100 pounds are charged. At the same time the defendant has been carrying saw logs between the same points for $2.50 per 1,000 board feet. The petition, filed March 9, 1911, alleges that the charges assessed were unjust, excessive, and unreasonable to the extent that they exceeded the rates on saw logs, for the reason that mine props and saw logs are one and the same, and that the uses to which they are put should not influence the fixing of the rates for their transportation. Reparation is sought.

Defendant in its brief invites particular attention to the fact that this petition attacks specifically the reasonableness of the rate only, alleging a violation of section 1 of the act only, and not a violation of section 2. It is true that the complaint is inartificially drawn, and states that complainant was "overcharged," while at the same time admitting that he was charged the lawfully published rate applicable to the traffic. But the petition specifically alleges that the amounts referred to as "overcharges" were "unjust and unreasonable" and "in violation of section 1 of the act" in so far as they resulted from rates which exceeded the rates contemporaneously applicable to saw logs. We shall proceed, therefore, to consider the record as presented upon this basis.

The logs intended for mine props are similar to those intended for conversion into lumber except as to length. Mine-prop logs are usually 27 or 28 feet in length, while saw logs are generally shorter. Since the loading and unloading are done by the shippers in both cases, the length of the logs becomes of minor importance as a transportation consideration. Logs intended for both purposes move from the same stations on defendant's line to Norfolk, and complainant's testimony is to the effect that in a number of cases it was necessary for the railway officials to know the use to which the logs were to be put before the rate to be charged could be determined. The distances traversed by the traffic from the North Carolina points to Norfolk range from 39 to 55 miles.

Defendant contends that there is such dissimilarity in the handling of mine props and saw logs as to justify the difference in the rates; that logs intended for mine props are handled on single cars that must be switched out of a train at the loading point, switched into another train when loaded, and switched to the track of a connecting carrier at destination; that sawmill logs generally move in solid trains, the only service of the carrier, in addition to the road haul, being the coupling and uncoupling of the engine at the two ends of the run. But the fact that certain traffic is hauled in trainload lots while complainant's traffic moves in carloads can not be made the basis of a difference in rates. Emphasis is laid on the fact that sawmill logs are moved on logging cars. The character of the equipment used is in the discretion and for the convenience of the carrier, the rate is not limited to movements on logging cars, and a shipment of sawmill logs on a flat car would still take the lower rate.

The record clearly shows that defendant's rates for the transportation of saw logs in this territory have proven to be reasonable and compensatory, and after careful consideration of all the matters referred to on behalf of defendant for the purpose of justifying a higher charge upon mine props than upon saw logs, we are not convinced that the circumstances and conditions surrounding the transportation of mine props are so dissimilar as to justify a higher charge thereon. In fact, from the record the conclusion seems inevitable, and we so find, that the rates assessed upon complainant's shipments of mine props from points in North Carolina to Norfolk were unjust and unreasonable in so far as they exceeded the rate of $2.50 per 1,000 feet, with a minimum carload of 3,500 feet, contemporaneously applied to the transportation of saw logs from North Carolina points to Norfolk, and defendant will be required to establish rates for the future which shall not exceed the rates contemporaneously applied to saw logs.

Complainant asks for reparation on some 380 shipments which moved under the rates complained of. Some of these shipments moved more than two years prior to the filing of the complaint, and others were intrastate movements. We have eliminated these shipments from consideration. Upon the remaining shipments, some 312 in all, we find that complainant was charged unjust and unreasonable rates and was thereby damaged to the extent of the amount which he paid in excess of the rates herein found to be reasonable, and that he is entitled to an award of reparation, with interest, upon that basis against the defendant. The parties may agree upon a statement of the shipments which are included in the above finding and the amount of reparation due thereon upon the basis of our conclusion, and upon presentation of same an order will be entered awarding reparation in the sum which shall be shown to be correct. An order will be entered at this time with regard to the rates for the future.

No. 4043.

SMITH-BOOTH-USHER COMPANY

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.

Submitted June 28, 1911. Decided April 1, 1912.

Upon the evidence in this case; *Held*, That the lawful rate was charged on complainant's shipments of boilers from Erie, Pa., to Coalinga, Cal., and that it does not appear that the rate was based upon the use to which the commodity was to be devoted. Complaint dismissed.

O. T. Helpling for complainant.

George D. Squires for Southern Pacific Company and Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in selling machinery and boilers at Los Angeles, Cal. Its petition, filed April 27, 1911, alleges that the rates charged by defendants for the transportation of three carloads of boilers and attachments from Erie, Pa., to Coalinga, Cal., were unreasonable and unduly discriminatory. The issue involves two questions: First, whether the carriers applied the correct one of two certain commodity rates; and, second, whether the rate complained of was applied according to the use to which the boilers were to be devoted. Reparation is sought.

In June, 1909, there were received at Coalinga by the American Petroleum Company three carloads of boilers with attachments, including plates, front pieces, bars, doors and frames, smokestacks in sections, guys and hooks, tied and loose pieces, and rods and other parts in boxes. The boilers were shipped from Erie by the Nagle Engine & Boiler Works for the account of the complainant, who had sold them to the consignee. The Pacific coast terminal basis does not apply to Coalinga, through rates to the latter point being constructed by the addition of arbitraries over the terminal rate. The shipments in question aggregated 109,450 pounds, and charges in the total sum of \$2,159.84 were collected from the consignee, based on a through rate of \$1.97½, composed of a rate of \$1.50 to Sacramento,

Cal., plus the local rate of 47½ cents from Sacramento to Coalinga. The boilers were sold f. o. b. Coalinga and the consignee in settlement with the complainant deducted the full amount of the freight charges. No complaint is made of that portion of the rate applying from Sacramento to Coalinga, but it is contended that the shipments were entitled to a rate of $1.40 from Erie to the coast terminal.

At the time the shipments moved western classification No. 45, I. C. C. No. 4, was in force and provided the following ratings:

Machinery and machines: Boilers, furnace flues, steel boiler drums, malting drums, air tanks, and air receiver tanks (boiler plate iron), loaded and unloaded by owner:

	L. C. L.	C. L.
10 feet and under in length	8	Minimum weight
Over 10 and under 30 feet in length	1	24,000 pounds,
30 feet long or over (see rule 12)	1½	class A.

Boiler attachments, consisting of fronts, grate bars, doors, boiler suspension, boiler tubes, boiler flue tile, and fire brick and clay, may be loaded with boilers at the same carload rating.

A note to the classification also provided that certain other articles, including smokestacks, might be loaded in mixed carloads with machinery specified above, taking class A in carloads.

Transcontinental freight bureau westbound tariff, I. C. C. No. 865, in force at the time of shipment, named the following commodity rates:

Iron and steel, articles of, viz: Boilers, steam, under 30 feet in length, and fire brick for use of same, minimum c. l. weight 24,000 pounds... $1.50

and

Machinery and machines, viz: Machinery and machines taking class-A rates, specified under the head of "machinery and machines," in western classification No. 45 (I. C. C. No. 3), supplements thereto, or reissues thereof, * * * straight or mixed c. l., minimum weight 24,000 pounds... $1.50

The commodity rate last named, in connection with the governing issue of the classification above quoted, was applied to the shipments in question. The complainant contends, however, that the carriers should have applied a commodity rate of $1.40 named in the same tariff, limited as follows:

Stoves: Furnaces, air or steam; furnace castings; radiators and registers and iron floor or wall ventilators; rotary blowers (not forge blowers) without power apparatus; cast-iron doors for partitions; steam or hot-water heating apparatus, viz—boilers, including range boilers with gas heating attachment, iron pipe, iron-pipe fittings, radiators, registers, steam gauges, steam traps and valves, minimum c. l. weight, 24,000 pounds... $1.40

The boilers covered by the classification under the head of "machinery and machines" are, we think, by common consent understood to be pressure boilers, adapted to the generation of steam for power purposes in the driving of machinery. It is admitted that the boilers shipped by complainant were of that type, and the complainant's sales manager testified that he made the sale, that he was at Coalinga and saw them installed, and that they were used for driving machinery. The evidence shows that the smokestacks and other attachments shipped with these boilers belonged essentially to the high-pressure type of boiler.

The term "boilers" under the commodity rating on stoves is plainly used in limitation. It reads:

Steam or hot-water heating apparatus, viz: Boilers, including range boilers with gas heating attachment, etc.

In the correspondence between the respective parties and the Commission on this claim prior to the hearing, the freight claim agent of the Southern Pacific had declined to allow the application of the heating-apparatus rate on the ground that it applied only on cast-iron boilers. Later, in a letter to the Commission, the chief traffic official of the Southern Pacific lines stated:

The $1.40 rate was published specifically upon boilers used in conjunction with hot-water or steam-heating apparatus—apparatus for heating buildings—which are low-pressure affairs, and therefore it is not applicable upon high-pressure steam boilers such as contained in the shipments subject of this complaint, and for which the tariff named a specific rate of $1.50 per 100 pounds, when in carloads of not less than 24,000 pounds.

In the ensuing correspondence the complainant admits that this contention of defendant is in the main correct; "that is, that these were not boilers specifically made to use with the ordinary apartment-house heating apparatus;" but, he says:

Our claim is based upon the fact that the item referred to by Mr. Stubbs on heating apparatus does not specify that the boilers must be cast iron, and, owing to that fact, an innocent party shipping under that clause would be discriminated against to the extent that the tariff was indefinite, and further that the tariff specified boilers and does not designate their kind, leaves it open for the general public to accept their meaning as it reads, we being in no position whatever to assume the carrier's intent.

The tariff, as already shown, named a commodity rate of $1.50, in carloads, on boilers under 30 feet in length. A like rate, without limitation as to length of boilers and applicable on all the usual and
attachments, is named elsewhere, in the same tariff, on boil-
scribed in the western classification;" while the $1.40-rate,
shown, is published on boilers specified in limitation of the
or hot-water heating apparatus," which in turn is found
heading "stoves." Just how an "innocent party"

shipping high-pressure power boilers "under that clause (of the stove commodity item) would be discriminated against" because of the omission of the term "cast iron" is not explained nor is it patent to us. So far as the question of conflict in the tariff is concerned, we think the tariff distinguished with sufficient clearness between the kinds of boilers.

But the complainant further contends that the defendants applied the rate of $1.50 according to the use to which the boilers were to be devoted, and it shows that the high-pressure boiler of the type shipped is to a greater or less extent used for heating purposes in large buildings. A Mr. Clifford, who, we understand, is a traffic agent located at San Francisco, testified that these high-pressure boilers were installed to even a greater extent in San Francisco than are the cast-iron sectional ones, and that they had been allowed transportation "in mixed cars with radiators and boilers at the radiator rate," and that when, representing several concerns in San Francisco, he filed claims with the carriers asking for the application of the $1.40 rate on past shipments made by his clients, the carriers declined and immediately advanced the lower rate to $1.50.

The witness testified that he knew of specific instances in which these boilers had been charged the $1.40 rate, and, upon being asked, named one consignee who had, as he stated, "gotten a lot of it." He also volunteered considerable testimony—mostly hearsay in its character—to the effect that other shippers of high-pressure boilers had made claims against the carriers based on the radiator rate and that these claims had been paid. He also testified that he had been told by a representative of the American Radiator Company that that company had never paid in excess of the radiator rate on any kind of boilers, and testifying further, apparently as of his own knowledge, he stated:

> Now, the American Radiator Company filed with the Commission—I don't know whether formally or informally—but they filed with the Commission a complaint asking for the application of the hollow-ware-boiler rate provided under the heading of "hollow ware" in the tariffs, which was then $1.20, on the cast-iron sectional boilers, and they got it. They got a lot of money back.

The records of the Commission show that such a complaint was in fact filed by the American Radiator Company. The complaint in question was lodged against certain carriers who had refused to apply to cast-iron sectional boilers adapted for steam or hot-water heating purposes the $1.20 rate specified for "hollow ware," including boilers. It was learned as the result of an investigation made by the Commission that on shipments of similar boilers forwarded over the lines of a certain other carrier, not a defendant in the complaint mentioned, the $1.40 rate had first been applied, but that later claims

had been paid by the carrier, which reduced the charges to basis of the $1.20 rate. The statement as to the Commission's action in respect of the complaint mentioned is untrue; not only did the Commission refuse to sanction the application of the rate sought, but it construed the $1.40 rate as undoubtedly applicable and refrained from instituting a prosecution against the complainant and the carrier which did apply the $1.20 rate only because it foresaw the possibility that the tariff might, either in good faith or by designedly specious representations, be susceptible of different interpretation.

Summed up, the evidence in this case shows that the high and low pressure boilers are not interchangeable in use; for while the high-pressure boiler may be, and sometimes is, installed as a part of a heating plant in large buildings, this seems to be an added use to which the latter is adaptable. The evidence shows that the low-pressure type can not be used in place of the high-pressure type. There appears to be no more reason for holding that the boilers shipped by complainant herein could be deemed entitled to the rating for steam or hot-water boilers limited under "stoves" than there would be for holding that the latter might be shipped at the rate specified under hollow ware (i. e., kitchen utensils). Upon the facts of this case the principle which prohibits applying a rate according to the use to which a commodity is to be devoted is not shown to have been contravened, nor has the rate charged been shown to have been unreasonable. The complainant failed to show that the articles are the same or even approximately identical, consequently the carriers must be deemed to have applied the lawful rating to complainant's shipments. The defendants, by advancing the stove rate to $1.50, have now eliminated the possibility of further controversy. The complaint will be dismissed and an order entered accordingly.

No. 4045.

CHARLES T. PERRY & COMPANY

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted October 5, 1911. Decided April 1, 1912.

Advance in rates since January 1, 1910, on candles in less-than-carload quantities from Helena, Mont., to points in the Coeur d'Alene district, Idaho, alleged to be unreasonable; *Held*, That the defendants have failed to show that the increased rates are just and reasonable. Former rates restored and reparation awarded.

J. A. Poore for complainant.

William Wallace, jr., for Northern Pacific Railway Company.

Parley L. Williams and *J. L. Wines* for Oregon-Washington Railroad & Navigation Company.

Report of the Commission.

By the Commission:

Complainant is a corporation engaged in manufacturing candles at Helena, Mont. Its petition, filed April 27, 1911, sets forth that the less-than-carload commodity rate on candles from Helena to Wallace, Idaho, was formerly 55 cents per 100 pounds, and to Burke, Wardner, Kellogg, and Osborne, Idaho, 56 cents; that effective April 5, 1911, the said rates from Helena were advanced as follows: To Wallace, 72 cents; to Osborne, 75 cents; and to Burke and Wardner, 77 cents. The advance was effected by making the rates formerly applicable to less-than-carload shipments apply to carload shipments with minimum weight 30,000 pounds, and less-than-carload shipments were given the new rates above specified, except as to Kellogg, to which the new rate was the third-class rate of 88 cents. The advanced rates are alleged to be unreasonable, and reparation is sought.

In justification of the advance the Northern Pacific Railway Company asserts that years ago, in order to foster complainant's industry, it established low commodity rates, but that recently there had been objection as to these rates from competitors of complainant; that the rates attacked are unreasonably low and if continued might force reduction of other rates.

Complainant contends that its business moves in less-than-carload lots; that competition is keener and the expense of operating greater now than formerly; and therefore complainant is not able to stand an advance in the cost of transportation; that it is not shown that the former rate was unremunerative and that certain comparisons of rates for similar distances indicate that the rate assailed is high.

No evidence was offered to show that the cost of the service had increased or that the carriage of this particular article was not profitable to them. These rates had been in effect for a period of years. Complainant established a business under them, and has no means of reaching the market other than via defendants' line.

We are of opinion and find that defendants have not sustained the burden placed upon them by the statute to show that the new rates are just and reasonable; and that the defendants should establish for the future rates not in excess of those in effect previous to the advance in question.

We further find that, in so far as complainant made shipments of the traffic in question and paid charges thereon at the rates found herein to have been unreasonable, it has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid had the rates herein found reasonable been applied, and that complainant is entitled to an award of reparation upon that basis. Complainant may file a statement of shipments showing necessary facts in connection with their movement, and upon its verification by the Commission an order of reparation will be entered.

No. 4140.

CASEY-HEDGES COMPANY

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL.

Submitted October 16, 1911. Decided April 1, 1912.

For transporting a carload of grate bars for power boilers from Chattanooga, Tenn., to Oakland, Cal., defendants collected charges based upon a rate of $1.41 per 100 pounds, applicable to "furnace castings." On complaint that rate was unreasonable and that defendants should have assessed a rate of 80 cents applicable to "castings, n. o. s., plain as from the sand;" *Held,* That the rate of 80 cents was properly applicable. Reparation awarded.

Arthur B. Hayes for complainant.

Charles J. Rixey, jr., for Alabama Great Southern Railroad Company and New Orleans & Northeastern Railroad Company.

H. A. Scandrett and *L. T. Wilcox* for Morgan's Louisiana & Texas Railroad & Steamship Company; Texas & New Orleans Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; and Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing grate bars at Chattanooga, Tenn. In a petition, filed June 3, 1911, it is alleged that on the 16th day of August, 1909, complainant shipped a carload of heavy grate bars, weighing 35,600 pounds, from Chattanooga to Oakland, Cal., for the transportation of which the defendants collected the sum of $501.96, based upon a rate of $1.41 per 100 pounds. It is further averred that under the tariff the shipment was entitled to a rate of 80 cents per 100 pounds, and that the rate charged was unreasonable to the extent of the difference in said rates. Reparation is asked.

The shipment consisted of heavy grate bars in a rough state, as they came from the sand, without hand or machine finish. The transcontinental tariff, under which they moved, did not specifically name grate bars, and the agent of the initial carrier billed the shipment at the 80-cent rate, which was applicable to "castings n. o. s., plain as from the sand, in no way hand or machine finished." The Southern Weighing and Inspection Bureau advanced the rate to $1.41, being

the rate applicable to "furnace castings," but no testimony was offered to show any reason for making the change.

The defendants maintain that the last-named rate was properly assessed, and that the rate on castings n. o. s. could not have been applied, because that is a rate made on rough castings to be shipped and further finished and is not applicable to the finished product.

Furnace castings are named in the tariff under the heading of "stoves" and the articles classed therewith indicate that such castings were intended for use in connection with heating apparatus. The castings comprising this shipment were for use in furnaces under power boilers, and the rate is stated under "iron and steel articles," practically all of which take the 80-cent rate. The testimony shows that the description of the shipment corresponded substantially with the specification in the tariff which prescribed a rate of 80 cents from point of origin to destination on "castings n. o. s., plain as from the sand, in no way hand or machine finished;" and furthermore, the principal witness for the complainant stated that prior shipments of similar material had always taken the rate on castings, n. o. s.

Upon the facts disclosed by the investigation it is the opinion of the Commission that under the tariff this shipment was entitled to the rate on castings, n. o. s.; and that the application of the higher rate resulted in an overcharge in the sum of $217.16, which the defendants should refund to the complainant without an order. Upon the production of satisfactory evidence that the overcharge has been refunded, the complaint will be dismissed.

No. 4343.

EDWARD BYRNES, TRUSTEE FOR H. WOODS COMPANY, BANKRUPT,

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted January 3, 1912. Decided April 1, 1912.

Upon petition for reparation on shipments of oranges, grapefruit, and pineapples from points in Florida to points in central freight association territory; *Held,* That under the circumstances of this case no reparation should be awarded.

H. C. Lust for complainant.

R. Walton Moore for Atlantic Coast Line Railroad Company; Seaboard Air Line Railway; Cincinnati, New Orleans & Texas Pacific Railway Company; Nashville, Chattanooga & St. Louis Railway, Norfolk & Western Railway Company; Georgia Southern & Florida Railway Company; Southern Railway Company; Central of Georgia Railway Company; and Illinois Central Railroad Company.

D. P. Connell for New York Central & Hudson River Railroad Company; Michigan Central Railroad; and Indiana Harbor Belt Railroad Company.

William C. Coleman for Baltimore & Ohio Railroad Company.

William A. Northcutt for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, who filed his petition August 28, 1911, on behalf of the H. Woods Company, now bankrupt, but formerly in the wholesale produce business in Chicago, Ill., alleges, in substance, that the defendants charged unreasonable rates for the transportation of oranges, grapefruit, and pineapples from certain producing points in Florida to destinations mainly in central freight association territory. Reparation is sought.

To justify his right to an award of reparation in this case complainant relies upon two former decisions of this Commission, wherein, he states, the rates here involved were held to be unreasonable. A hearing was had at which witnesses testified for the

complainant, and bills of lading and receipts showing the payment of freight were put in evidence.

The decision averred to be of paramount importance to complainant is *Florida Fruit & Vegetable Shippers' Protective Asso.* v. *A. C. L. R. R. Co.*, 14 I. C. C., 476, decided June 25, 1908. The decision was based upon a petition filed by the shippers directly attacking the rates for the transportation of oranges, grapefruit, pineapples, vegetables, etc., from producing points in Florida to northeastern cities. The rates to such destinations were reduced. In the discussion of this case the Commission said, at page 495:

> Carriers north of the Ohio River at the present time charge the third-class rate from the Ohio River crossing to destination, which, as we understand, is the same rate that would apply if the shipment originated at the Ohio River. In our opinion something less than this should be charged by these railways, and we also think that with respect to traffic into this territory perhaps the rate from Florida itself to the Ohio River ought to be somewhat reduced. This question can only be dealt with by establishing on some basis through rates from Florida points to destination points in this territory, which can not be done in the present instance, since the petition contains no prayer to that effect and since most of the carriers north of the Ohio River are not parties to this proceeding. If these rates are not readjusted, our attention can be called to that matter later.

The complainant argues that this expression of the Commission amounts to a finding that the rates from Florida producing points to the destinations involved in this proceeding were unreasonable from and after the date of the decision, and the claim for reparation is based upon shipments made between the date of this decision and the decision in the second case hereinafter mentioned.

We do not agree with the contention of the complainant that the expression of the Commission, above quoted, amounts to a decision that the rates from Florida producing points to destinations in central freight association territory are unreasonable. The statement made in reference to such rates shows that no decision was made or could have been made owing to the fact that the carriers interested were not parties to the proceeding and had been given no opportunity to defend. If complainant's contention that this question was decided in the first case were true, then the second case would have been unnecessary.

On February 8, 1910, upon a petition filed by the Florida Fruit & Vegetable Shippers' Protective Association against the Atlantic Coast Line Railroad Company and numerous other defendants, including those operating in the central freight association territory, reported in 17 I. C. C., 552, the rates from Florida points to destinations in said territory were reduced. Neither in the first case nor in the

second, conducted in the interest of the producers and shippers, was any claim for reparation made. On August 28, 1911, the complainant in this case filed his petition seeking an award of reparation for shipments made within two years prior to the filing of the said petition. The evidence does not disclose that any claim was filed by the now defunct company during the time it was actively engaged in business. The testimony given by the principal witness for the complainant is contradicted in important details by a witness who was, at the time of the shipments upon which reparation is sought, interested jointly with the complainant company in such shipments.

Some time prior to the institution of this proceeding the Commission had incorporated its views with respect to cases of this sort into rule 206 (*d*) of the conference rulings, to the following effect:

> Claims for reparation based upon a decision of the Commission filed by complainants not parties to the case in which such decision was rendered will not ordinarily be allowed unless reparation was claimed in the complaint upon which such decision of the Commission was based, or was awarded by the Commission. The Commission may, however, in the exercise of its discretion, upon good cause shown, and under unusual circumstances, specially consider a particular claim for reparation of this class.

In the opinion of the Commission no unusual circumstances have been presented by the complainant in this case that are sufficient to justify a departure from this ruling.

The Commission has repeatedly held that a reduction of the rates of the carriers does not necessarily imply that reparation will be awarded in all such cases. Without at this time reiterating the numerous grounds for the denial of reparation, it is deemed adequate for the purposes of this case to refer to the discussion of the principles of disallowance of damages found in *Anadarko Cotton Oil Co.* v. *A., T. & S. F. Ry. Co.*, 20 I. C. C., 43; *Dallas Freight Bureau* v. *G., C. & S. F. Ry. Co.*, 12 I. C. C., 223; *Ullman* v. *American Express Co.*, 19 I. C. C., 354.

Upon consideration of all the facts and circumstances disclosed by this investigation it is the opinion and conclusion of the Commission that complainant's prayer for reparation must be denied, and an order will be entered dismissing the complaint.

No. 4351.

A. V. NEILSON COMPANY, LIMITED,

v.

LOUISIANA RAILWAY & NAVIGATION COMPANY ET AL.

Submitted November 9, 1911. Decided April 1, 1912.

Rate of 80 cents per 100 pounds for the transportation of cartridges from Bridgeport, Conn., to Alexandria, La., found to be unreasonable in so far as it exceeds 65 cents per 100 pounds. Reparation awarded.

H. J. Fernandez for complainant.

E. C. D. Marshall for Louisiana Railway & Navigation Company and Philadelphia & Gulf Steamship Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale grocery business at Alexandria, La. By petition, filed August 29, 1911, it alleges that defendants' rate for the transportation of small-arms ammunition in carloads from Bridgeport, Conn., to Alexandria, La., is unreasonable and discriminatory. Reparation is asked.

The chamber of commerce of Shreveport, La., filed a petition in this case asking permission to intervene, but failed to be represented at the hearing.

In July, 1911, complainant shipped from Bridgeport to Alexandria a carload of small-arms ammunition weighing 30,356 pounds, and charges of $249.77, which included insurance, were collected thereon. The freight charges were assessed on basis of a rate of 80 cents per 100 pounds. The shipment moved from Bridgeport to Philadelphia via the New York, New Haven & Hartford Railroad and the Pennsylvania Railroad; from Philadelphia to New Orleans via the Philadelphia & Gulf Steamship Company's line; and from New Orleans to destination via the lines of the Louisiana Railway & Navigation Company.

The rate on small-arms ammunition from Bridgeport to Little Rock, Ark., via the route through New Orleans, employed by complainant, is 45 cents per 100 pounds. Complainant contends that Alexandria, being intermediate to Little Rock via defendants' lines, should also be given the 45-cent rate. However, defendants handle very few

shipments to Little Rock from eastern seaboard territory, Memphis being the gateway via which most of this traffic moves. The rate on cartridges from Bridgeport to Lake Charles, via defendants' lines, is 60 cents per 100 pounds. To Baton Rouge, La., the rate is 41 cents. Shreveport, La., takes the same rate as Alexandria—80 cents. The distance from New Orleans to Alexandria is 184 miles; from New Orleans to Baton Rouge, 80 miles; and from New Orleans to Lake Charles, 218 miles. Lake Charles and Baton Rouge have water connection with New Orleans. Defendants contend that competition via these water routes produces substantially lower rates to Lake Charles and Baton Rouge than to Alexandria. A comparison with the rates on groceries to these points from eastern seaboard territory, however, discloses a smaller differential than on ammunition. On canned goods, Baton Rouge and Lake Charles take a rate of 35 cents and Alexandria a rate of 45 cents, a difference of 10 cents. The differences in the rates to Alexandria and the rates to Lake Charles and Baton Rouge on small-arms ammunition, however, are 20 cents and 39 cents, respectively.

Upon consideration of all the facts of record, we are of the opinion and find that the rate complained of is unreasonable to the extent that it exceeds 65 cents per 100 pounds, and a rate not in excess of that amount will be prescribed for the future.

We further find that complainant made the shipment in accordance with the above statement of facts and paid charges thereon at the rate found herein to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid had the rate found reasonable been applied; and that it is, therefore, entitled to an award of reparation in the sum of $45.17, with interest from August 16, 1911.

With regard to the rates named in the tariff to points beyond Alexandria, such as Little Rock, to which the rates are lower than to Alexandria, complainant alleges that there is a violation of the fourth section of the act. The carriers have filed an application for relief from the provisions of the fourth section in connection with these rates, and the conclusions here announced are not to be considered as having any bearing upon the merits of said application when it shall come on for consideration. An order will be entered accordingly.

No. 3769.

PUBLIC SERVICE COMMISSION OF WASHINGTON

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted December 26, 1911. Decided April 1, 1912.

The Northern Pacific, being the only line having rails extending to South Tacoma, is entitled, in the protection of its investment, to conduct traffic between South Tacoma and other points on its line on a preferred basis; and shippers who desire to use competing lines ought not to object to paying, in addition to the Tacoma rate, a reasonable charge to the Northern Pacific for its local haul between Tacoma and South Tacoma.

Stephen V. Carey, assistant attorney general, for complainant.

George T. Reid and *Charles Donnelly* for Northern Pacific Railway Company.

F. G. Dority for Great Northern Railway Company.

H. H. Field for Chicago, Milwaukee & Puget Sound Railway Company and Tacoma Eastern Railroad Company.

Jay W. McCune for Transportation Bureau of Tacoma Commercial Club, intervener.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

Since this complaint was filed with us by the Railroad Commission of Washington that body has been succeeded by the Public Service Commission of Washington and the order entered herein will take cognizance of that fact and provide for the substitution of the new commission as the party complainant.

What we are asked to do is to require the defendants to establish for the merchants of South Tacoma through routes and joint through rates with respect to their interstate traffic on substantially the same terms and conditions that were recently required of the same defendants by the state commission with respect to their state traffic. The facts gathered from the record made before the state commission and introduced in evidence here are as follows:

Before the entrance into Tacoma of the rails of its co-defendants, the district within the city limits now known as South Tacoma was included by the Northern Pacific within its Tacoma switching district, and industries in South Tacoma were on a rate equality with industries located elsewhere in Tacoma. This was the situation for more

than 15 years prior to January 15, 1910. During all that time the Northern Pacific was the only line having tracks extending into that part of the city. This, in fact, is still the case; while the Oregon-Washington Railroad & Navigation Company and the Great Northern move state and interstate traffic through South Tacoma to points beyond, they do this over the rails of the Northern Pacific under trackage agreements that expressly withhold from them the right to take traffic to and from South Tacoma. All merchandise destined to or consigned from South Tacoma over those lines is handled for them by the Northern Pacific to and from its interchange at Tacoma. This is the case also with traffic moving to and from South Tacoma over the Chicago, Milwaukee & Puget Sound. For the service so performed for its co-defendants the Northern Pacific had established a switching charge which they were compelled to absorb. In this manner they were able to compete for the traffic of industries on the Northern Pacific terminals at South Tacoma.

On January 15, 1910, the Northern Pacific so modified its tariffs as to exclude South Tacoma from its Tacoma switching district. In place of the switching charge it established a local rate between Tacoma and South Tacoma of 2 cents per 100 pounds, with a minimum of $6 and a maximum of $10 a car. This imposed on the manufacturing establishments and jobbing houses of South Tacoma additional charges for transportation ranging from $6 to $10 per car over and above the Tacoma rates, although the rates of both points had theretofore been on a parity. Under the new tariff the additional charge was imposed on state traffic even when the Northern Pacific had the line haul.

The contention of the complainant is that the new tariffs lay an unreasonable burden upon the interstate traffic of South Tacoma and also subject it to an undue discrimination in that industries at all other points within the municipal limits of Tacoma, many of which are equally distant and otherwise similarly situated, have the benefit of the Tacoma rates without any such additional charge.

In dealing with the situation, so far as it affected commerce within the state, the state commission, very properly we think, recognized the importance of preserving to the Northern Pacific the full benefit of its very large investment in its Tacoma terminals. The effect of its order, as we understand it and as it is explained on the brief of counsel for the state commission, was to leave South Tacoma traffic to the Northern Pacific so far as it is able to furnish the through service, and at the same time to give to manufacturers and jobbers and to other industrial enterprises at South Tacoma the service of the co-defendants of the Northern Pacific with respect to traffic to and from points within the state not reached by the Northern Pacific, and to

give them this service on a rate parity with industries in other parts of Tacoma. Where its co-defendants have a line haul to or from a point within the state that is served by the Northern Pacific, the order of the state commission permits, in addition to the Tacoma rate, the application of the full local rate of the latter company between Tacoma and South Tacoma. As the Northern Pacific is prepared to furnish a through service between South Tacoma and points within the state on its own line, the view of the state commission was that it was fairly entitled to conduct traffic between such points on a preferred basis. This conclusion, with respect to traffic within the control of the state commission, affords some protection to the Northern Pacific in the use of its own terminals and apparently is based on the theory, with which we are not prepared to find any fault, that shippers between such points who prefer to use competing lines ought not to object to paying, in addition to the rate, a reasonable charge to the Northern Pacific for its local haul between Tacoma and South Tacoma.

The order entered by the state commission to give effect to its findings and conclusions has been accepted by the Northern Pacific and its co-defendants on their state traffic, and we see no reason why an order based on the same general principle should not be a reasonable adjustment of the situation with respect to their interstate traffic. We do not understand that the complainant demands at our hands any relief with respect to interstate traffic that it was unwilling itself to require of the defendants with respect to state traffic; and the intimation is broadly made on the briefs that the Northern Pacific and its co-defendants would acquiesce in such an order by this Commission. We therefore find that South Tacoma is entitled to through interstate routes and rates on that basis.

In view of the manner in which the case was submitted for our decision we do not understand that an order will be required, but that the defendants will adjust their tariffs in harmony with the conclusions we have reached. In case they are not able to agree upon divisions, the matter may be referred to us for further consideration.

No. 2986.

SUNDERLAND BROTHERS COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted April 7, 1911. Decided April 1, 1912.

In a prior report in this case it was held that the minimum weight assessed on complainant's shipments of lime from Ash Grove, Mo., to Pine Bluffs and Laramie, Wyo., was excessive, and a lower minimum weight was prescribed for the future. Reparation was awarded. Upon rehearing the former decision sustained.

No appearance for complainant.

Fred H. Wood for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

The decision of the Commission upon the original proceedings in this case is reported in 18 I. C. C., 545. The issue therein was upon the reasonableness of charges assessed on certain carload shipments of lime which moved via the lines of the St. Louis & San Francisco and Union Pacific roads, from Ash Grove, Mo., to Pine Bluffs and Laramie, Wyo. Briefly stated, the facts with respect to two shipments embraced in the original petition, are, that on one shipment made April 17, 1909, to Pine Bluffs the defendants assessed charges at a rate of 34 cents per 100 pounds, based upon a minimum weight of 24,000 pounds. On the second shipment, also to Pine Bluffs, made September 5, 1909, charges were assessed at a rate of 29 cents upon a minimum of 30,000 pounds. The petition alleged that said rates were unreasonable and discriminatory and that a reasonable through rate should not exceed 27 cents.

The answer of the St. Louis & San Francisco Railroad Company showed that on June 21, 1909, a joint through rate of 27 cents had been established and admitted that any rate in excess thereof on the shipment of September 5, 1909, constituted an overcharge which should be refunded. It denied, however, that the charges on the shipment of April 17 were unjust or unreasonable. The Union Pacific Railroad Company, in its answer to the petition, admitted

that "a joint rate of 27 cents when used in connection with a minimum weight of not less than 30,000 pounds is a reasonable through rate and minimum for the transportation of complainant's shipments referred to in the petition," but denied that said rate would be reasonable if applied on a minimum of 24,000 pounds.

The shipment to Laramie, made June 23, 1908, was covered by an amendment to the original petition. The charges were assessed on basis of a combination of rates, made up of 27 cents and a minimum weight of 30,000 pounds, to Cheyenne, Wyo., and 17 cents upon a minimum of 24,000 pounds from Cheyenne to Laramie. Complainant alleged that 44 cents, the sum of the intermediate rates charged, would be reasonable when applied to a minimum of 24,000 pounds through, and that the charges collected were unreasonable to the extent they exceeded those which were assessed on that minimum. The St. Louis & San Francisco denied that 44 cents would be a reasonable rate when applied to a minimum of 24,000 pounds. The Union Pacific admitted that such a rate would be reasonable when used in connection with a minimum of 30,000 pounds, but not in connection with a minimum of 24,000 pounds, and further maintained that the minimum of 30,000 pounds from Ash Grove to Cheyenne, of which complaint was made, is proper and reasonable.

The Commission admitted testimony introduced by complainant showing that lime is to some degree a perishable commodity, and for that reason is usually handled in relatively small quantities, especially by shippers in small towns. It was found that the established minimum from and to practically all parts of the country was 24,000 pounds, and that that minimum was applied from Ash Grove and other lime-producing points on the St. Louis & San Francisco to practically all points to which through rates are published by that company, except Colorado common points; that from competitive points on the Mississippi River the same rates were published as from Ash Grove, but applicable upon a minimum of 24,000 pounds; that the minimum to Laramie and likewise to Rock Springs, Wyo., 260 miles beyond, was also 24,000 pounds. The defendants claimed that Pine Bluffs is a Colorado common point; that the rates to Colorado common points, which are large distributing centers, were 22 cents on a 40,000-pound minimum and 27 cents on a 30,000-pound minimum; and that to reduce the minimum to Pine Bluffs would break down the common-point adjustment. In reference to these contentions of the defendants the Commission found that Pine Bluffs and Laramie are not distributing points; that Pine Bluffs was not made a Colorado common point until 1909, and that it did not at the time of hearing take Colorado common-point rates on either lime or from Mississippi River points. Taking into consideration

these facts and the further fact that points with which Ash Grove shipments must compete enjoyed a minimum of 24,000 pounds, the Commission held that the application of the 30,000-pound minimum on through shipments from Ash Grove to Pine Bluffs and Laramie was unreasonable to the extent it exceeded 24,000 pounds.

Except as to the shipment of April 17 to Pine Bluffs, no question was raised in respect of the published rates, as such, when considered as factors in determining the reasonableness of the through charges on these shipments. The issue was joined squarely on the question of the reasonableness of the minimum weight upon which the carload rates should be applied. Upon the decision rendered the defendants filed a petition for rehearing, which was granted. No further evidence was offered upon the rehearing; but the defendant carriers filed a brief to which the complainant made reply, and the case now comes on for a determination of the matters presented in said petition and in the briefs and arguments made in support thereof.

The defendants state three grounds of objections to the Commission's decision. First, as to the jurisdiction under the pleadings. It is contended that in the absence of a prayer in the amendment for a through route and joint rate, the Commission was without authority to establish a minimum applicable over the two lines comprising the through route over which there were in effect separately established rates and minima to Laramie, because the pleadings were not specifically based upon an application for a through route and joint rate. It is sufficiently clear from an examination of the record that issue was joined on the question of what would be a reasonable minimum weight to be applied on through shipments in connection with a through rate of 44 cents on the traffic in question. After a full hearing the Commission reached the conclusion, above stated, that a reasonable minimum would not exceed 24,000 pounds, and it found the same with respect to the minimum on traffic to Pine Bluffs to which a joint rate of 27 cents had already been established by the carriers. The act to regulate commerce expressly empowers the Commission to determine the reasonableness of any part or the aggregate of charges for interstate transportation and to establish joint rates. The rate and the minimum weight are so united in making up the charges for the performance of this service that the averments of the petition are considered a sufficient basis for the finding in this case, and we can not regard the objections of the defendants on this ground as tenable.

The defendants contend, secondly, that the principal ground for reduction of the minimum by the Commission was that dealers in lime at local stations are not able to dispose of more than 24,000 pounds without waste and loss. Testimony to this effect was presented

at the hearing, but a careful reading of the decision will disclose that no reference is made thereto in the findings of fact, and that other and sufficient reasons are stated as grounds for the conclusions reached.

Coming now to the remaining reason presented by the defendants for reversing the decision, it does not appear that this opinion is opposed to the prior rulings of the Commission upon the subject of minima. It is true the Commission decided in *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.*, 16 I. C. C., 134, that the minimum can not be fixed with regard to the needs and desires of the purchasers of the product; but it is evident that all rules, regulations, and charges affecting the ultimate cost of transportation must be made with a reasonable regard for the nature of the commodity transported and without undue discrimination as between localities or shippers. The Commission has heretofore suggested some of the factors that should have consideration in determining the minima of cars, and it is not perceived that anything heretofore decided is inconsistent with the conclusions reached upon the facts of record in this case.

Upon a consideration of all the matters presented by the defendants upon the rehearing of this case, it does not appear that the former report and order are in error, and the Commission adheres to its original decision.

INVESTIGATION AND SUSPENSION DOCKET No. 81.

IN THE MATTER OF THE INVESTIGATION OF ADVANCES IN CLASS AND COMMODITY RATES FROM CHICOPEE, MASS., AND OTHER POINTS LOCATED ON THE BOSTON & MAINE RAILROAD, TO NEW YORK CITY, VIA CHATHAM AND RENSSELAER, N. Y.

Submitted March 27, 1912. Decided April 8, 1912.

On traffic originating at certain stations in Massachusetts on the rails of the Boston & Maine and moving to New York City in connection with the Boston & Albany, through Chatham or Rensselaer, the former road gets a haul of but 6 or 8 miles, while on traffic moving through Troy it has a haul of 120 miles. On the facts developed at the hearing, and without announcing any general rule or principle; *Held*, That in view of its meager earnings on traffic originated by it and moving through Chatham or Rensselaer, the Boston & Maine is entitled to an opportunity to demonstrate the efficiency of the Troy route.

Richard T. Eddy for Interstate Commerce Commission.

William S. Kallman for New York Central & Hudson River Railroad Company.

Henry J. Hart for Boston & Maine Railroad.

R. Van Ummersen for Boston & Albany Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

For some years Willimansett, Holyoke, Brightwood, Chicopee, and Chicopee Falls, all stations on the Boston & Maine in the state of Massachusetts, have had the benefit of a through route to New York City over the Boston & Maine to Springfield and thence over the New York, New Haven & Hartford, and of two through routes in connection with the Boston & Albany from Springfield, one through Chatham and the other through Rensselaer. The New Haven route from Chicopee Falls, which may be taken as a representative point, is 144 miles long; the route through Rensselaer 249 miles and the route through Chatham 213 miles long. Of the latter two the route through Chatham is not only shorter but presents better operating conditions, and for that reason 99 per cent of the traffic moving from these points to New York City in connection with the Boston & Albany is handled over this route. The traffic over the New Haven route however aggregates many times the traffic over the other two routes

The towns in question are all within a short distance of Springfield. Chicopee Falls, for example, is but 6 miles distant, and that is all the haul the Boston & Maine gets on traffic originated there by it when destined to New York City over any of these routes. Its local rates to Springfield are as follows:

Classes	1	2	3	4	5	6
Rates	8	6	5	4½	4½	4

But on traffic moving through Springfield and over either the Chatham or Rensselaer routes its divisions out of the joint through rates with the Boston & Albany are as follows:

Classes	1	2	3	4	5	6
	3.96	3.42	2.88	2.34	1.98	1.98

The traffic to New York City from the points in question is not large. For the six months ending March 1, 1912, the earnings of the Boston & Maine, in connection with the New Haven route, aggregated only $6,647.95. Those two lines are closely affiliated, and if the Boston & Maine is to be short-hauled, it naturally prefers to have the traffic take the New Haven route. During the same period, however, its earnings on traffic moving over the Chatham route aggregated but $672.30. In view of these meager returns the Boston & Maine undertook to close that route, as well as the Rensselaer route, by withdrawing its joint through rates with the Boston & Albany. But at the request of the Commission the tariff filed to effect that result was withdrawn pending our consideration of the matter. The real purpose of the Boston & Maine in preparing to take that action was not to divert the traffic to the New Haven route, but to divert it to a route of its own through Troy where its line connects with the New York Central. This movement gives it a haul of 120 miles, but the route is one of 268 miles, or 55 miles longer than the Chatham route. The question before us, then, is whether under the circumstances detailed it may lawfully close the Chatham and Rensselaer routes, that bring the necessary result of the cancellation of its joint through rates with the Boston & Albany.

Before publishing its tariffs it appears that the Boston & Maine went into a conference with the Hampden Traffic Association and secured its approval of its proposed action. That organization represents the towns named in this complaint and other places in that part of Massachusetts. But objection has been made by the Chicopee Traffic Association. This association, however, did not appear at the hearing, but supported its objections only by filing sworn statements. Its special complaint is that the service over the Troy route is not so prompt as the service over the Chatham route. An endeavor was made to illustrate this by shipping papers showing delayed movements, but an examination of the instances described

shows that three of the shipments were not handled by the Boston & Maine at all, and the five others mentioned did not move over the Troy route.

The Boston & Albany, at Springfield, makes up cars for various delivery points in New York City that go forward in a train leaving Springfield at 6 p. m. daily, delivery being made in New York City at 7 o'clock on the second morning. Shippers from Chicopee Falls may still have the benefit of this service by a dray haul to Springfield; and the record seems to disclose that a substantial less-than-carload traffic is now handled in this way. The Chatham route is desirable because it reaches important delivery points on the New York Central terminals that are not reached over the New Haven route. But the same delivery points may be reached by the Troy route, the New York Central being the delivering line for traffic moving through Troy. Another objection made to the New Haven route is that the minimum charge over that route is 40 cents, while the minimum charge over the Chatham route is but 25 cents. We are told, however, that there is but little minimum-charge traffic in this tonnage, and that phase of the matter, therefore, needs no discussion. As a matter of fact, at the present time almost ten times as much traffic moves over the New Haven route as over the other three routes combined.

The real point in the controversy is that the Troy route, as heretofore stated, is 55 miles longer than the Chatham route, and operating conditions at Troy are said to be such as to subject less-than-carload traffic to delays, and thus prevent a delivery in New York City on the second morning. All freight must be handled over the Troy Union Railroad, a short double-track road about one mile long, running on the streets through the city of Troy and owned jointly by the Delaware & Hudson, the Boston & Maine, and the New York Central. The passenger and freight traffic that moves over it is very large, and less-than-carload shipments destined to New York City coming into Troy in quantities weighing less than 5,000 pounds for any one delivery point in New York City must be taken into the New York Central freight houses at Troy, there to be classified and segregated and loaded into cars destined to particular delivery points in New York City. This takes time, and undoubtedly must result in a service that is less satisfactory than the service over the Chatham route. But representatives of the Boston & Maine and of the New York Central both agreed that the service over the Troy route would be substantially as good as that over the Chatham route, and that second morning delivery in New York City could be accomplished if the Boston & Maine would deliver traffic on the tracks of the New York Central at Troy prior to 5.30 p. m. and in quantities

of 5,000 pounds or more destined to one delivery point in New York City, and more especially to the Thirty-third street station, which we understand to be the station most frequently used by these shippers. This the Boston & Maine asserted it could do. Under these circumstances we think the Boston & Maine should be given an opportunity to demonstrate the practicability and efficiency of its Troy route and thus avoid being so seriously short-hauled, as is now the case, with respect to traffic which it originates. It is scarcely to be expected that a carrier that may have a haul of 120 miles would be satisfied with a haul of but 6 miles with the meager earnings accruing under its established divisions. Nor should we regard it as a reasonable attitude on the part of a shipper to demand that a carrier should be so short-hauled except upon a clear showing that the service over the other route was not satisfactorily maintained and reasonably prompt.

It must be understood that in reaching this conclusion we are not laying down any general rule or principle for application in such cases as this, but are dealing with the particular case before us as developed on the record and with a view to ascertaining by experience whether the objections made to the action contemplated by the Boston & Maine have any practical basis. If they have not it is manifest that there is no occasion for interference by this Commission with this effort of the Boston & Maine to enlarge its earnings.

Under the circumstances no order seems to be required. But the record will be held open in case, after the joint through rates have been canceled, the result to shippers may seem to require them again to bring the matter to our attention.

INVESTIGATION AND SUSPENSION DOCKET NOS. 50, 50–C, AND 50–F.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF CERTAIN REGULATIONS AND PRACTICES WITH REGARD TO PRECOOLING AND PREICING.

Submitted March 20, 1912. Decided April 8, 1912.

Carriers involved herein, complying with an order of this Commission, filed tariffs establishing the rate of $7.50 per car for precooling oranges shipped from points in southern California to the east, but immediately thereafter they filed other tariffs canceling these tariffs and withdrawing the privilege of precooling altogether. Upon protest from interested shippers the Commission suspended the tariffs canceling the precooling privilege; *Held*, That shippers have the right to precool; that $7.50 per car is a reasonable charge to be made by the carriers for their service in that connection; that the tariffs withdrawing this charge are unlawful; and that the present tariffs or their equivalent should be continued in effect.

Asa F. Call and *Cassoday, Butler, Lamb & Foster* for Arlington Heights Fruit Exchange and others.

Robert Dunlap, T. J. Norton, F. C. Dillard, Gardiner Lathrop, and *W. F. Herrin* for defendants.

REPORT OF THE COMMISSION.

PROUTY, *Chairman:*

In *Arlington Heights Fruit Exchange* v. *So. Pac. Co.*, 20 I. C. C., 106, the Commission reduced the charge of the defendants for precooling from $30 to $7.50 per car. Proceedings were begun by the carriers in the Commerce Court to enjoin the enforcement of this order, but that court declined to interfere, holding apparently that inasmuch as the order simply required the reduction of a rate voluntarily established by the carriers, nothing but the amount of the charge was before the court and that the right of shippers to insist upon the privilege of precooling could not be adjudicated in that proceeding.

Thereupon the carriers filed tariffs establishing the rate of $7.50, as ordered by the Commission, but immediately thereafter they filed other tariffs canceling these tariffs and withdrawing the privilege of precooling altogether. Upon protest from interested shippers the Commission suspended the tariffs canceling the precooling privilege by its order in this proceeding, so that the question for our present

consideration is, Have the carriers the right to cancel their precooling tariffs and thereby withdraw that privilege entirely?

All the facts bearing upon this subject were presented to the Commission upon the hearing in the former case and are fully stated in the opinion of the Commission, which is referred to and made a part of this present opinion. All parties have waived the right to introduce further testimony and have asked that the matter be disposed of upon the former record.

To what extent the refusal of the defendants to furnish cars for precooling under tariffs which have been regularly established amounts to a violation of the act to regulate commerce, or whether this Commission can deal with such refusal either by an express order requiring the furnishing of cars or by the giving of damages for such failure, are questions which have not been presented in argument and which are not at this time considered.

Neither have we been asked to consider whether the cancellation of these tariffs and the withdrawal of the privilege is such a change in rates as justifies us in suspending the tariffs of cancellation and requiring the maintenance of the rate. Apparently no such question could be successfully raised. If shippers are entitled to precool upon a reasonable charge, then it must follow that this Commission has authority to determine that reasonable charge and require carriers to file tariffs establishing it. The withdrawal of such tariffs when already filed is clearly a change in the rate to the disadvantage of the shipper which this Commission may properly suspend. If the shipper is entitled to this rate, then the Commission upon determining that fact should order the rate to be filed and maintained. How far the carrier may go in declining to furnish equipment, or what the remedy of the shipper may be in case of such refusal, is a different question.

The defendants in their briefs assume that the only subject for consideration now is the single inquiry, Have shippers the legal right upon proper terms to preice their shipments, as that term is defined in the former opinion? If shippers have that right, then it is apparently conceded that the Commission may by its order require the maintenance of tariffs according it in due form.

In its original opinion, at page 115, the Commission said:

When precooling was first tried no additional charge was made by the carriers. After the precooling plants at East Highlands and Pomona had been erected a charge of $30 per car was established; that is, if the shipper precooled and preiced his car and the carrier then transported that car to its destination without icing in transit, the shipper was required to pay $30 per car, which the complainants contend is unreasonable. The defendants now te that this charge was established for experimental purposes; that they eny the legal right of the shipper to precool and preice his fruit and are

satisfied that that privilege ought not to be accorded upon any terms. While they have allowed their tariffs to remain in effect pending this proceeding, they express the intention upon its determination of withdrawing the privilege entirely. Two questions are therefore presented for our determination.

1. Has the shipper the legal right to precool and preice his shipments in the manner indicated?

2. What, if any, charge may the carrier reasonably make when the car is so treated?

It will be seen, therefore, that the exact question which we are called to pass upon now was presented in the former case. No new facts are before us. Additional briefs have been filed by both parties, but the arguments now introduced on both sides were urged in the former case and were fully considered by us. We find no reason for reaching a different conclusion now from that formerly announced.

It does not seem profitable at this time to restate in any detail either the facts or the reasons actuating the Commission, since those are fully given in the former opinion, but for the purpose of presenting distinctly the issue involved the claims of the parties and the position of the Commission may be briefly recapitulated.

The carriers insist that precooling, as practiced by these shippers, is essentially a refrigeration service; that this service is by statute made a part of the transportation which they are required to furnish, and that therefore they may and must supply it, and may insist upon their right to do so without interference by the shipper.

This Commission expressed the opinion before the enactment of the statute in its present form that the furnishing of necessary refrigeration for the transportation of fruits and vegetables was a transportation duty devolving upon the carriers, and that while this service was sometimes in part performed by the shipper it should be treated as a part of the transportation for which the carrier should be held responsible. The present statute making refrigeration a part of transportation was enacted at the suggestion of this body. If, therefore, precooling as practiced is refrigeration, as previously defined by this Commission, then we are committed irrevocably to the proposition that it is a part of the transportation service and that carriers may and should ordinarily perform that service without recourse to the shipper; certainly they may insist upon performing the service exclusively. If the rate charged is unreasonable then that charge, like any other for a transportation service, may be reduced upon application to this body.

We are, however, of the opinion that the thing done in this case is not refrigeration as ordinarily understood and as previously considered by us, and not a part of the transportation service which these carriers render. The reason for this conclusion is found in the character of the service itself.

Under ordinary refrigeration oranges are placed in the car with spaces between the tiers so as to admit of the free circulation of air. The ice bunkers in the ends of the car are filled with ice, sometimes before the car is loaded but usually not until after the fruit has been put in position, and the ice bunkers are opened and replenished from time to time as the car proceeds on its journey. It is the duty of the carriers to see that the bunkers are properly provided with ice and that the vents of the car are properly closed or opened.

Precooling as practiced by these shippers is entirely different from the refrigeration above described. Under this method the fruit is brought from the orchard to the packing house and is at once packed and placed in a cold room where the heat is gradually extracted. Shippers insist that the essential feature of precooling or preicing as practiced by them is that the fruit be at once placed under refrigeration, that the heat be gradually and thoroughly extracted from the fruit without subjecting it at any time to an abnormally low temperature, and that when cooled it should be kept at that temperature until loaded. When the car is to be loaded it is brought to the packing house, connected with the cooling room, and thoroughly cooled itself. The oranges are now packed into the car, not with spaces between the boxes but in a solid mass, which incidently permits of increasing the load of fruit from five tiers to six. The bunkers are filled with ice, large cakes especially prepared for the purpose being used and great care being taken to see that the bunkers are thoroughly filled. After all this has been done the car is sealed up and hauled through to its destination without opening the bunkers and without unsealing the car.

In our opinion there is nothing connected with this operation which is or properly could be a part of the transportation service. Certainly that can not be a transportation service which the carrier in the nature of things can not perform, and there is no essential element in the successful use of preicing which must not be performed by the shipper and which could be properly or advantageously performed by the carrier.

The carrier might furnish the ice with which the bunkers are filled, but it could only do so at a disadvantage and if compelled to furnish this ice in proper shape and at a price which would be reasonable as compared with the cost of the ice to the shipper at that point, would not care to do so. If the carrier were allowed to furnish the ice, it could not properly fill the bunkers and seal the car for transportation, since this would require the services of an expert at each separate packing house, nor ought it to be permitted or required to do this inasmuch as the shipper must assume the responsibility of the work having been properly performed.

The only service required of the carrier is to provide the car, set it at the packing house, and when loaded haul that car within a reasonable time to its destination and there make delivery in the same condition in which it was received. The mere fact that ice is used in connection with this shipment no more makes the process of precooling a transportation service than as though ice were placed in the receptacle containing the article to be shipped and not in the bunker of the car. Fish and poultry are very often shipped in barrels filled with ice, but it will not be claimed that for this reason the carrier has the right to furnish the ice which is placed in the package nor to decline to receive the package because it does contain this ice.

But while in our opinion the process of precooling as above defined is not a transportation service, since it is performed by the shipper and can not be performed by the carrier, it does nevertheless take the place of refrigeration, and if these defendants had provided and were prepared to furnish refrigeration which would answer the same purpose as precooling at substantially the same price then it might perhaps be held that the shipper should avail himself of the refrigeration which the carrier was prepared to furnish; but that situation is not here presented. This record shows that the cost to the shipper of refrigeration when furnished by the railroad in any one of the several forms offered is upon the average from $30 to $35 a car greater than the cost of precooling. The complainants urge that they have the legal right to precool and that this right can not be denied them by this Commission. Without expressing any opinion upon that proposition, we are clear that until the carriers offer a substitute for precooling which is fairly its equivalent in cost and in efficiency, it is the right of the shipper to avail himself of this privilege. As stated in our former opinion, the difference in expense applied to all the carloads of citrus fruits which are now refrigerated in transit would equal $600,000 per year. It is a singular proposition that this enormous waste must continue indefinitely and increasingly because these carriers have made an investment the value of which will be impaired if the privilege to precool be accorded.

We are of the opinion that shippers have the right to precool; that $7.50 per car is a reasonable charge to be made by the carriers for their service, as stated in the former opinion in that connection; that the tariffs withdrawing this charge are unlawful; and that the present tariffs or their equivalent should be continued in effect, and it will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET No. 78.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF FLAXSEED IN CARLOADS FROM FORT WILLIAM, PORT ARTHUR, AND WESTPORT, ONTARIO, TO NEW YORK, N. Y., PHILADELPHIA, PA., AND OTHER POINTS.

Submitted March 23, 1912. Decided April 8, 1912.

Proposed advanced rates on flaxseed from Fort William and Port Arthur, Canada, to Buffalo, N. Y., and other eastern points, found not unreasonable or unduly discriminatory. Order of suspension vacated and suspended tariff allowed to take effect.

Arthur M. Hall for Spencer Kellogg & Sons.

John A. Mann for Mann Brothers Company.

James A. Twohey and *W. B. MacInnes* for Canadian Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Chairman:*

This proceeding involves advances in rates on flaxseed from Fort William and Port Arthur, Canada, to Buffalo, N. Y., and other eastern points of destination. The justification of the defendants is best understood by referring to the past history of these rates.

The flaxseed consumed in the United States is largely produced in the Dakotas, from which it moves to crushing mills located at various points—for example, Minneapolis, Chicago, Buffalo, and New York. Flaxseed is also produced to a considerable extent in the Canadian northwest, but the import duty is 25 cents per bushel, and ordinarily the Canadian crop is mainly crushed in Canada itself. During the last two or three years there has been a short crop in the United States which has forced up the price to much above its normal level, with the result that considerable quantities have moved from Canada to various crushing mills in this country.

There are several possible avenues for this movement from Canada to United States points, the principal ones being via the Canadian Northern to Duluth and thence by water or by some American line of railway to the point of consumption, or by the Canadian Pacific

to Port Arthur and Fort William and thence by water or rail to destination. In the past the rates from Canadian points of production to Fort William and Port Arthur have been materially lower than those from corresponding producing points to Duluth.

Some two years ago, when the importation of flaxseed from Canada began to assume considerable proportions, application was made to the Canadian Pacific for a rate from Fort William and Port Arthur to points of consumption in the United States which would be the same as rates from Duluth to the same points. It should be borne in mind that, while rates from Canadian points of production to Duluth were higher than to Fort William, rates from American points of production to Minneapolis and Duluth are ordinarily approximately the same, so that flaxseed at Fort William competes with flaxseed at Duluth and Minneapolis.

At the time this application was made the rate from Duluth to New York was constructed by adding together a rate of 7½ cents per 100 pounds from Duluth to Chicago and a rate of 16 cents from Chicago to New York, producing a through rate of 23½ cents. The Canadian Pacific substantially met this rate by establishing a rate of 25 cents from Fort William to New York with corresponding rates to other eastern points of consumption. This tariff was made effective January 25, 1910, and is the tariff now in effect under our suspension order.

The rate by American lines from Duluth to New York was constructed, as already said, by combination on Chicago. Of these intermediate rates both that from Duluth to Chicago and from Chicago to New York were the regular rates applied to the transportation of coarse grains, the through rate being lower than that upon wheat. Soon after this, lines leading from Chicago to the Seaboard advanced the rate on flaxseed from the former commodity rate on grain to sixth class, thus producing a rate of 25 cents from Chicago to New York as compared with the former rate of 16 cents, and a through rate from Duluth to New York of 32½ cents. These rates are still in effect.

The traffic manager of the Canadian Pacific testified that the purpose of his company in advancing its rates from Fort William and Port Arthur was to put the rate from those points on a level with the rate from Duluth. He further testified that in his opinion the former rate was too low; that it was only established because of the competition from Duluth through Chicago, and that the present rates were just and reasonable.

It further appeared upon the hearing that rates from points of origin in Canada upon the Canadian Northern into Duluth had been reduced so that they were now the same to that market as from

corresponding points by the Canadian Pacific to Fort William. The purpose and effect of the present adjustment is to permit the movement of flaxseed from points of production in Canada to points of consumption in the United States through Duluth and Fort William for the same charge.

This order of suspension was issued upon the protest of Spencer Kellogg & Sons, who are large crushers of flaxseed, with mills at Minneapolis, Buffalo, and the Atlantic seaboard. This concern was represented upon the hearing and made a full statement of its objections to the advance. The first actual notice which this company had of the filing of the advanced tariff to take effect March 1, was on February 9. It then had on store in elevators at Port Arthur and Fort William over 300,000 bushels of flaxseed, which it had purchased with intent to transport the same to eastern points on the rates which had been maintained for nearly two years. Serious congestion upon the lines of the Canadian Pacific made it impossible for the protestant to obtain the movement of this flaxseed from the elevators previous to March 1, although the same had been ordered out. It fairly appears from the testimony offered upon this hearing that the moving cause of its objection to the advanced tariff was the fact that the Canadian Pacific was unable to bring forward this seed which had been bought and put in store upon the strength of the old rate before the effective date of the new tariff. This seed has, in fact, all come forward, and the protestant now has on hand in the northwest no seed purchased before receiving notice of the advanced tariff.

Earnest objection was made, however, against the advance upon the ground that the advanced rate was unjust and unreasonable, and, in evidence of this, reference was made to the grain rates in effect between these same points.

It appears that while there is no uniform relation between the rates on flaxseed and on various kinds of grain, the general rule is that the rate on the seed is slightly higher than that on coarse grains. Ordinarily this difference does not exceed 2 cents per 100 pounds, and is frequently as low as 1 cent per 100 pounds. The rate from Duluth to Chicago is the same upon flaxseed and coarse grains, and is 2½ cents lower than the rate upon wheat.

The value of flaxseed at the present time is over $2 per bushel, and it fairly appears that, taking the last 10 years as a whole, its value has averaged twice that of corn and materially more than that of wheat. Flaxseed is handled in substantially the same way as are the various kinds of grain. It is carried loose in the car and is handled through elevators by the same machinery. The testimony shows that somewhat greater care is required in preparing the car for the shipment of flaxseed than for most other kinds of grain for

the reason that a somewhat tighter car was required. On the whole, the cost of transportation and the incidents of transportation are approximately the same.

It will be remembered that rates from Duluth are constructed by combination on Chicago, and that the rates on flaxseed from Chicago to eastern points are the regular sixth class rates, which are generally much higher than the corresponding grain rates. It was conceded by the representative of Spencer Kellogg & Sons that the rate east of Fort William ought to be the same as that east of Duluth, but it was insisted that the present rates from Chicago, and hence the rates from Duluth to the Atlantic seaboard, were unjust and unreasonable, and that therefore the rates of the Canadian Pacific under investigation were also unjust and unreasonable.

There is no commercial reason why the rate on flaxseed should bear any relation to that upon other grain, unless it may be found in the circumstance that flaxseed can be grown in the same regions where other grain is produced, and this was not urged or referred to upon the hearing. The price of flaxseed is very much higher than that of oats, corn, or even wheat, and the rate would not be of as much significance in the value of this article at the point of consumption.

The representative of one mill engaged in crushing flaxseed at Buffalo appeared and urged that the present rates on the seed to the seaboard were unduly low. The product of the crushing mill is oil and cake, the oil being used in the manufacture of paints and for similar purposes, while the cake is largely exported. The oil ordinarily takes the fifth class rate, while the cake is given the grain and grain-product rate. The present rate from Duluth to Buffalo is 20 cents, and to New York 25 cents. The fifth class rate from Buffalo to New York is 16 cents and the local rate on the cake is 11 cents; for export 8½ cents. The Buffalo crusher urged that the difference in the rate upon the seed between Buffalo and New York was altogether too small in comparison with the rate applied to the movement of his product.

This Commission has often had occasion to observe that the rates upon grain and grain products between points of production in the west and the Atlantic seaboard are low in proportion to other commodities. A rate of 16 cents per 100 pounds from Chicago to New York yields a ton-mile revenue of about 3.5 mills. These low rates are due partly to water competition and partly to severe rail competition in the past, which has produced a low level of rates. They ought to be low, for they move an immense volume of traffic. We see no good reason why these rates upon flaxseed should of necessity be the same as corresponding rates upon grain, and think that they may well somewhat exceed those rates. There is no commercial connection, as already said, between flaxseed and other kinds

of grain, and, from what little this record discloses as to the manner in which this flaxseed is used and in which its products are finally brought to the consumer, we can see no commercial reason why carriers should be required to transport this article for an abnormally low rate from the point of its production to the Atlantic seaboard. There is no apparent reason why rates should not be so adjusted as to permit the manufacture at points nearer the point of consumption as well as upon the Atlantic seaboard.

Flaxseed can be transported by water as well as by rail. When carried by water it takes a rate about one-eighth of a cent a bushel higher than that applied to wheat. It was said that large quantities were now brought from Duluth to Buffalo by water, both by line and by tramp steamers and that much of it was also carried from Buffalo to New York by canal. It is evident, therefore, that during the period of navigation flaxseed can not move by rail at the rates proposed to be established, and this may finally result in forcing in lower rates.

The Canadian Pacific stated that its purpose in establishing these rates was to equalize the cost of transporting flaxseed from Canadian points to points of consumption in the eastern part of the United States through Fort William and Duluth, and it was conceded by all parties that rates from Fort William and Duluth to eastern points should be approximately the same. No opinion whatever is expressed as to the reasonableness of the rates on flaxseed from Chicago to eastern points of destination. The only rates before us are those from Port Arthur and Fort William to eastern destinations, of which New York and Buffalo may be taken as typical. The advanced rate to New York is 32½ cents for a distance of approximately 1,400 miles, yielding a ton-mile revenue of about 5 mills. The advanced rate to Buffalo is 22½ cents for a distance of 900 miles, yielding substantially the same ton-mile revenue as the New York rate. We are of the opinion that these rates for the transportation of flaxseed are in themselves reasonable, and we find no element of undue discrimination in this record.

But a single line of railway, the Canadian Pacific, appeared at this hearing, and only two crushing mills were represented. A more comprehensive investigation might reveal facts which would modify the conclusions here reached.

Our order of suspension will be vacated and the suspended tariff allowed to take effect.

INVESTIGATION AND SUSPENSION DOCKET No. 11.

THE TAP LINE CASE.

Submitted April 15, 1911. Decided April 23, 1912.

The common ownership of an industry and a short line serving it is not in itself sufficient to divest the railroad of its status as a common carrier. On the other hand the fact that the rails, locomotives, and cars of an industry have been turned over to an incorporated railroad company owned and operated by the industry or in its interest does not divest those appliances of their character as a plant facility if such in fact is the case. A line must be drawn at some point between what is transportation and what is industry and between a facility of transportation and a plant facility or tool of the industry. Each case, however, must stand on its own facts. On the facts shown of record; *Held*, That the service performed for the proprietary lumber companies by certain tap lines described in the report is not a service of transportation by a common carrier.

John H. Marble for Interstate Commerce Commission.

S. H. Cowan, *Frank Andrews*, and *Andrews, Ball & Streetman* for interveners.

Walter Guion, attorney general, *Ruffin G. Pleasant*, and *Wylie M. Barrow*, assistant attorneys general, for Railroad Commission of Louisiana.

R. P. Allen for Railroad Commission of Arkansas.

Robert Dunlap, *T. J. Norton*, and *James L. Coleman* for Atchison, Topeka & Santa Fe Railway System.

William A. Northcutt, *Nelson W. Proctor*, and *Albert S. Brandeis* for Louisville & Nashville Railroad Company.

James C. Jeffery for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company.

Fred H. Wood for St. Louis & San Francisco Railroad Company.

S. H. West for St. Louis Southwestern Railway Company.

S. W. Moore for Kansas City Southern Railway Company.

H. M. Garwood, *Luther M. Walter*, *N. S. Brown*, *Sidney F. Andrews*, *A. Cochran*, *E. J. Mantooth*, *McRae & Tompkins*, *Gaughan & Sifford*, *Rodgers & Dorough*, *Julian C. Wilson*, *W. C. Gilbert*, *Charles T. Coleman*, *W. M. Lewis*, *James M. Beck*, *William A. Glasgow, jr.*, *Saner & Saner*, *Hill, Brizzolara & Fitzhugh*, *Edgar A. Bancroft*,

Samuel D. Snow, *John S. Kirkpatrick*, *W. L. Stocking*, *Marcellus Green*, *Garner Wynn Green*, *Frank P. Leffingwell*, *Walter H. Saunders*, *T. Brady, jr.*, *Mixon & Cassidy*, *Mehaffy*, *Reid & Mehaffy*, *Thurmond & Farrar*, *J. W. Bishop*, *D. B. Holmes*, *Ashley Cockrill*, *Henry M. Armistead*, *J. F. Gautney*, *John B. Jones*, *C. F. Ziebold*, *Stubbs*, *Russell & Theus*, *J. D. Riddell*, *Bradley & McKay*, *Leon Sugar*, *Greer & Minor*, *Blair*, *Drayton & Hillyer*, *Charles H. Bates*, *Dean*, *Humphrey & Powell*, *Joe R. Lane*, *Joseph C. Rich*, *J. Gaillard Hamilton*, and *Coleman & Lewis* for individual tap lines.

Report of the Commission.

Harlan, *Commissioner:*

An industrial railroad, as that phrase is now commonly used, is a short line constructed primarily to serve the particular plant or industry in the general interest of which it is owned and operated. It consists of the tracks connecting the various factories, warehouses, and other buildings of the industry with one another, and ordinarily has a connection with one or more adjacent trunk lines by means of a track leading from the plant to their rights of way. It serves the industry by receiving its inbound shipments of raw materials from the trunk lines at agreed interchange points, distributing them among the various buildings according to the requirements of the manufacturing operations, and by taking its finished products from the plant to the trunk lines; it is also often in a position to effect all the necessary movements of materials and partially finished products from building to building within the plant. The rails, tracks, and locomotives are more frequently operated as a bureau of the industry and no pretense is made of serving outside interests. In recent years, however, a practice has grown up under which the rails, tracks, and locomotives operated and used in and around an industrial plant, when set over to a small incorporated railroad company, organized for the purpose and owned by the industry or in its interest, are thereafterward dealt with by the regular lines as something wholly apart from the industry and as if they constituted a common carrier in the service of the general public, participating on an equal basis with other carriers in the transportation of the traffic of the country. On this theory of their status many industrial lines receive allowances out of the rates both on the traffic of the controlling industry and upon such traffic of outside interests as they may handle.

The aggregate amount so paid by the regular lines to industrial lines throughout the country is not known. It has been estimated at not less than $100,000,000 a year. On the basis of such investigations as we have been able to make it seems entirely conservative to say that they amount, for the whole country, to not less than $50,000,000 or $60,000,000 a year. In many cases the allowances so received out

of the rate are sufficient, and are intended both by the carrier and the industry owning the industrial line to be sufficient, to cover the cost not only of the movement of materials and finished products between the plant and the adjacent trunk lines but the cost of all the operations of the industrial lines for the industry within its plant. In no small number of cases the allowances are sufficient to meet all these costs and to return handsome dividends on the entire investment of the industry in its tracks and equipment. In some cases the amount thus received by a particular industry is so large as to contribute materially to its prosperity as compared with the prosperity of a competitor in the same line of business receiving no such aid. To a concern whose manufacturing operations are large, a contribution of this kind from the public carriers may be relatively unimportant, but similar aid to a competitor that is not so strong might readily determine in some cases whether it is to survive in the struggle or go out of existence.

The importance of the question and the numerous informal complaints of discrimination arising out of these relations between public carriers and industrial lines led the Commission several years ago to enter upon an extensive general examination of industrial lines of all classes. The investigation was closed, for the purpose of, compilation, on June 30, 1909, upon a record embracing 2,208 cases where tracks and locomotives were owned and controlled and used by industries in active operation. Of that number it appeared that 1,748 were owned by affiliated industries directly or through the direct ownership of all the stock of an incorporated industrial line. In 264 cases the stockholders of the industrial line were identical with the stockholders of the controlling company. In 164 cases the industrial company, on the face of its records, owned a majority of the stock of the industrial line. Of the 2,208 industrial lines then in operation, but 611 were incorporated as railroad companies. The remaining 1,597 lines were being operated directly by the owning industrial companies. Out of the whole number, incorporated and unincorporated, only 450 were receiving divisions or allowances from the public carriers. Some 363 derived some revenues under local rates, while 1,395 derived no revenue at all from operation. Out of the whole number, but 135 were receiving, according to their own claims, as much as 20 per cent of their traffic from the general public; and there is reason to think that a careful analysis of the figures would materially modify the extent of this outside traffic. In the case of 2,073 lines 80 per cent or more of the traffic was supplied by the controlling industrial company. Of the whole number, only 441 had filed tariffs or concurrences with the Commission, as required by law, and but 345 had filed annual and monthly reports.

In the operations of manufacture and production it was first the practice to use horses and wagons for handling materials in and about the industrial plant, and in the same way to haul the raw material from the tracks of the public carrier to the plant, and to haul the manufactured product from the plant to the carrier's receiving station. Later pushcarts and handcars, sometimes moving on rails, cranes, conveyers, and other appliances were brought into use. These facilities are still to be found in many of the smaller industries. But with the combinations of capital and the concentration of manufacturing operations into large plants, railroad tracks, cars, and locomotives have become necessary to avoid delay and expense in handling the raw material into and in and about the plant, and in order to deliver the manufactured products as cheaply as possible from the plant to the carriers that move them to the markets. It can not be doubted that large economies in the cost of manufacture and production have been effected in that way. When the service is performed on rails by a bureau of the industry and with locomotives that it owns and with crews that it employs, this change in method was manifestly not a change in the thing done but simply a change in the facility used for doing the same thing. Whether the service, so far as the controlling industry is concerned, takes on another aspect when the rails and locomotives have been set over to an incorporated railroad company owned by or in the interest of the industry, and ceases to be a part of the industrial operation as was the service performed by the horses and carts and other appliances formerly used by industrial companies and still used by the smaller concerns, is a question that manifestly must depend upon the facts in each case. In a formal investigation we are now looking into the relations between the public carriers and the industrial lines affiliated with iron and steel industries, and with other manufacturing concerns located in the territory east of Chicago. A number of particular instances are also before us upon formal complaint. All these cases will be considered in due time. We propose here to examine only industrial lines affiliated with lumber companies, limiting our observations to lumbering operations in the southwest, and more particularly to those in the states of Arkansas, Missouri, Louisiana, and Texas. These small railroads, owned by or affiliated with lumber companies and commonly referred to as tap lines, although different from other lines in many respects, are generally classified as industrial railroads. The tap-line question, therefore, is simply a phase of the larger question which we have endeavored to outline in the foregoing pages. So far as it affects the lumber interests in that territory, it has been considered in a general form in *Central Yellow Pine Asso.* v. *V. S. & P. R. R. Co.*, 10 I. C. C., 193; *Central Yellow Pine Asso.* v. *I. C. R. R. Co.*, 10 I. C. C., 505; and *Star Grain*

& Lumber Co. v. *A. T. & S. F. Ry. Co.*, 14 I. C. C., 364; 17 I. C. C., 338. It was also considered on the special facts of the case in *Kaul Lumber Co.* v. *C. of G. Ry. Co.*, 20 I. C. C., 450, where the haul of logs to the mill was held to be a plant service. The matter is again before us upon further complaint and upon a voluminous record, in which the relations between the so-called tap lines and the respective lumber companies, in the interests of which they are owned and operated, were exhaustively examined. All that is here said must therefore be understood to relate to the conditions disclosed upon this record and as having relation only to industrial lines that are owned by or affiliated with lumber companies in that particular territory.

The lumber traffic of the country in the aggregate is enormous. Allowances, however, are not universally made to the tap lines of lumber companies. Taking the industry as a whole throughout the country an allowance by a public carrier to a lumber road or tap line is the exception rather than the rule. Even in the yellow-pine forests west of the Mississippi River, which is the territory more particularly involved on the record before us, there are more tap lines receiving no allowances than there are tap lines to which such allowances are paid. To some extent the practice of making such concessions out of the rate has spread to the yellow-pine districts east of the Mississippi River and allowances are now paid to a few of those mills. The rest of the mills east of the river enjoy no allowances and formerly none were paid at all. This difference in conditions east and west of the river is doubtless reflected to some extent in the current rate of 16 cents on lumber from mills west of the river as compared with a 14-cent rate on lumber from mills east of the river to such points, for example, as Cairo; generally speaking, the rates from points west of the river seem to be higher than the rates east of the river for hauls of equal distances. In the statement of facts preceding the opinion of the court in *Illinois Central R. R.* v. *I. C. C.*, 206 U. S., 441, 444, the difference in the practice on the two sides of the river was explained in the following language:

> The railroads west of the Mississippi make a certain allowance to the mills which have "logging roads"—that is, roads by which logs are hauled from the timber to the mills. This is called "tap-line allowance or division." * * * The mills east of the river have logging roads also, but appellants make no allowance to them. * * * There does not appear to be any reason for such allowance west of the Mississippi which does not apply east of that river, *and it amounts to a rebate* or reduction from the regularly published rate, and gives an advantage to the mills west of the Mississippi over those east, although the published rates from both are the same.

While it is said that the allowances paid west of the river enter into and affect the general rate structure from those producing points, an examination of the tariffs does not show that the rates for hauls from

mills west of the river are uniformly higher than rates for hauls of equal distances from mills east of the river. Such discriminations as may exist, as between mills east and west of the river, do not arise so much out of the rate schedules as out of the fact, just mentioned, that a large number of the mills west of the river enjoy allowances from the trunk lines while those east of the river and the majority of those west of the river have the benefit of no such aid from the carriers.

Of the 2,208 industrial lines of all classes that were examined in the course of the general investigation referred to, it was found that some 1,251, incorporated and unincorporated, were tap lines owned by or closely affiliated with companies engaged in different parts of the country in the manufacture of lumber and forest products. Of these so-called railroads only 243 were found to be receiving allowances from the public carriers. On the other hand 1,008 were receiving no allowances of any kind. The 243 lumber companies that were beneficiaries of such contributions from the public carriers were operating, through their tap lines, 5,787 miles of track, while the tap lines of the 1,008 other mills receiving no aid from the public carriers were operating 12,358 miles of track. These figures fairly lead to the inference that it is the larger lumber companies with their larger traffic that receive allowances, while the smaller concerns are compelled to get along without such contributions from the public carriers.

These 1,251 lumber mills in different parts of the country are operated under different conditions and manufacture lumber of different kinds and classes. It must be remembered, nevertheless, that they are all in competition with one another in the general lumber markets of the country. But limiting our comments to the conditions that exist west of the Mississippi River in the three states of Arkansas, Texas, and Louisiana, where the lumber industry is confined largely to yellow pine, we find that the public carriers, at the time our investigations were brought to a conclusion, were making allowances out of the rates to 112 tap lines, while 143 tap lines were receiving no such contributions. Later in this report we shall analyze the conditions under which many of these lumber industries were conducting their operations, and shall examine into the mileage, tonnage, and motive power of their respective tap lines, and the conditions under which they were being used in the process of turning their logs into lumber. At this point it will suffice to say that 11 of the tap lines receiving no allowances had been incorporated; on the other hand 6 unincorporated tap lines were receiving allowances. The general rule, however, as heretofore stated, was to pay allowances only to the incorporated tap lines. Nevertheless, taken as a whole, the tap lines receiving no allowances are shown by the investigation to have

been operated, so far as the lumber traffic is concerned, under conditions that were substantially similar to the conditions surrounding the operation of most of the tap lines that were enjoying allowances from the public carriers. The yellow-pine lumber companies in those states compete with one another in the same general markets and under conditions that would be equal, so far as can be ascertained from the record, were it not for the fact that the carriers aid some of them with contributions out of the rates, while the majority of them bear their own burdens in conducting their lumber operations.

DISCRIMINATIONS RESULTING FROM ALLOWANCES.

That discriminations grow out of these contributions by the public carriers to certain of the lumber interests in Arkansas, Missouri, Texas, and Louisiana is apparent upon the face of the record. The allowances paid range from a minimum of three-quarters of a cent to 6 cents per 100 pounds. In the competition of carriers for the traffic allowances as high as 7 cents per 100 pounds have been paid out of a 14-cent rate, where the haul of the tap line was a matter of feet and yards while the haul of the carrier itself approximated 400 miles. The amount of the allowance seems not to be governed definitely by the extent or character of the service said to be performed by the tap line, but to result to some extent from the bargain made between the carrier and the lumber company. In one case a tap line, operating 6 miles of main line, receives allowances of 3 and 4 cents per 100 pounds, while a few miles away another tap line, operating 12 miles, receives but 1 to 2½ cents per 100 pounds, depending upon destination; in each case the public carrier performs all the service between the mill and its own tracks. It did not appear that the controlling lumber companies, the real beneficiaries of the allowance, knew of the discrimination between them until the facts were developed on the hearing. Other instances appear of record where incorporated tap lines are receiving allowances that are less or greater than the allowances paid to other incorporated tap lines performing a service that is substantially similar in extent and character and under like conditions. A number of witnesses for tap lines expressed surprise at the hearing upon learning of the larger allowances paid to other tap lines. The three principal trunk lines whose tracks extend through the territory in question are the Kansas City Southern, the Iron Mountain, and the Rock Island. As illustrating the extent of the discrimination arising out of the payment of allowances to some tap lines and the failure to make allowances to others, it is well here to state that of 27 tap-line connections of the Kansas City Southern it makes allowances to 15, while 12 receive no allowances. The Iron Mountain has junctions with 90 tap lines, to

63 of which allowances are made; the other 27 have no allowances. The Rock Island is reached by 43 tap lines. Of this number it makes allowances to 33, leaving 10 without allowances. This was the condition existing at the time of the hearing.

This difference in the treatment by carriers of lumber companies owning incorporated tap lines is one form of discrimination growing out of tap-line allowances. But there are also other forms. There is the discrimination involved in the payment of allowances to one lumber company through its incorporated tap line, while the same public carrier in the same territory refuses to make any allowance to another lumber company using a tap line that has not been incorporated, but where all the other conditions, as well as the extent of the service, the mileage, motive power, cost of operation, etc., are substantially similar. An instance of this kind is before us upon formal complaint in Docket No. 3878. This proceeding was brought by the Davis Brothers Lumber Company against the Chicago, Rock Island & Pacific Railway Company and other carriers. The complainant company was included in our general investigation and the conditions under which it conducts its lumbering operations are shown of record and are explained upon its complaint. It appears that its plant and yearly output are much more extensive than those of many other lumber companies that are receiving allowances. It has 16 miles of tap line and 5 miles of logging spurs. It operates 4 locomotives and uses 40 logging cars. It has a small amount of traffic for outsiders, a claim that can not be advanced by many of the incorporated tap lines that are receiving allowances. In its complaint it points out that all the lumber companies in this territory have long used logging roads to haul logs from their adjacent forests to their mills, and that these facilities have, until recent years, been regarded as mere adjuncts to their plants; that the Rock Island, on the pretense that tap lines become common carriers when incorporated, is making allowances to the competitors of the complainant, ranging from 2 to 3 cents per 100 pounds and even higher, while refusing such aid to the complainant which uses and always has used a logging road of the same kind, for the same purpose, and which it has operated at the same proportionate expense. A striking allegation in the complaint is that the Rock Island has offered to pay the complainant similar allowances if it would go through the form of incorporating its logging road as a common carrier, a device which the complainant regards as a mere evasion of the act, and to which it therefore has declined to resort. It is a device, however, which the record shows has been adopted by many lumber companies in this territory at the express suggestion of trunk lines which desired their traffic and advised the incorporation of their tap lines as a basis for galizing allowances.

The tap lines that are not incorporated are operated in precisely the same way and for precisely the same purposes, so far as the proprietary lumber companies are concerned, as are the incorporated tap lines. Nevertheless the lumber companies that have not incorporated their tap lines must not only bear the entire burden of the cost of their operation but must share with the general shipping public the burden cast upon the rates by the large amounts paid by the trunk lines to lumber companies having incorporated tap lines. The aggregate figures are not available in this proceeding, but from a careful check of the information found on the record it has been estimated that the allowances paid through their incorporated tap lines to these lumber companies in Louisiana, Arkansas, and Texas amount to not less than a million and a half dollars annually. Were the facts accurately known it is said that a complete check would disclose an aggregate of from two million to three million dollars annually. Indeed, the assistant attorney-general of Louisiana, using figures prepared by the railroad commission of that state and relating to that state only, said on the argument:

> The tap lines incorporated and operated as common carriers haul an annual tonnage of 4,061,876 tons of lumber. Assuming the average allowance paid the tap lines in Louisiana as 3 cents per 100 pounds, it may safely be estimated that the tap lines received $2,437,125 as divisions from their interstate freight rates with trunk lines.

WHAT IS A TAP LINE?

Originally it was usual to refer to all the rails used in a lumber mill operation as a "logging road." But since the practice of making allowances to the lumber companies west of the Mississippi River has crept in, and more particularly within the last four or five years, the rails leading from the mill to or through the timber, and usually to a logging camp or company town, have come to be known as the main line or "tap line." The spurs radiating into the forest from that point or from other points along the main line are now usually referred to as the "logging road."

The tap lines shown on the record differ from one another in details and no description of one would be an altogether accurate description of another. It is possible, nevertheless, by a general description to give a fairly accurate impression of their physical characteristics and their relations to the proprietary lumber companies:

TAP LINES GENERALLY DESCRIBED.

Some new mills have been erected within the last four or five years. In most of these cases the tap lines were constructed in the name of an incorporated railroad company, owned, however, either by

or in the interest of the lumber company. But in the great majority of the cases on the record the present incorporated railroad company operates tracks that were originally constructed and operated directly by the lumber company as a facility in its manufacture of lumber. Later the title to them was turned over to the newly incorporated railroad company in exchange for its stock. In all these cases the railroad company is directly owned by the lumber company or in its interest. In most instances the tap line was incorporated for no other purpose than to give the lumber company the color of a legal right to receive allowances. Witness after witness, as heretofore stated, broadly and definitely admitted at the hearing that the sole object in incorporating his tap line was to obtain and legalize the allowances. For the Bernice & Northwestern a witness said:

> Well, we really chartered to get the divisions; we had to charter before we could get them. We chartered in order to get the divisions.

This statement was not made under the stress of cross-examination but in reply to an inquiry as to why his road had been incorporated. It is illustrative of many similar statements made on behalf of other tap lines; they were incorporated, in other words, not to serve the public, but primarily to get an allowance. When the Rock Island lines were pushed into this territory already served by other lines it entered upon an active contest to share in the lumber traffic by offering higher allowances or divisions than the other lines were paying. A standard form of contract was prepared to which both the lumber company and its tap line were usually parties. One of its requirements was that the lumber company must route not less than 50 per cent of its traffic over the Rock Island lines. Another clause, inserted as a protection against possible future troubles and obligations, provides that in case this Commission or a state commission or any court should declare the contract unlawful or the allowances excessive, the former should at once become void, and in either event no claim for damages should result against the Rock Island. It appeared at the hearing that in many cases the lumber companies had incorporated their tap lines on the advice of the Rock Island or other public carriers serving this territory. For the Sabine & Northern Railroad, Mr. Walden said:

> We incorporated because the traffic department of the Kansas City Southern advised me that it was the opinion of their legal department that they could not pay divisions * * * unless the roads were legally incorporated as common carriers, and in order to get these divisions we incorporated.

The record is filled with similar admissions by other witnesses representing other tap lines. Counsel for one trunk line in order, as he explained, to get the fact of record, said that his legal [dep]artment some years ago advised the traffic department that it

would be illegal to pay an allowance or a division of any kind to an unincorporated tap line, but that it would be legal to pay a division to an incorporated tap line. Subsequently, his traffic department advised the lumber interests that had been receiving allowances that they would no longer be paid unless their lines were incorporated, and new lines were advised that they had to be incorporated.

But, generally speaking, there was no change after the tap line was incorporated, either in its physical characteristics or in the extent or nature of the service that it performed for the lumber company by which it was owned. The tracks and equipment of the lumber company were simply turned over to an incorporated railroad company and the work of the controlling industry went on precisely as it had when the tracks and equipment were operated directly by it. The only dissimilarity that exists between tap lines that receive allowances and those that do not is that the former are incorporated while the latter are not; and this dissimilarity resulted in many instances from the suggestion of the public carriers that wished to have some appearance of a legal basis for securing the traffic. In a number of cases the tap line is well built; in other cases there has been an improvement in that regard since its incorporation. In some cases the tap line has been extended beyond the immediate needs or requirements of the industry through the forests of the lumber company to a connection with a second trunk line. In most of these cases it frankly appears that this expense was not incurred until after the trunk line had given the lumber interest the assurance of better allowances than it was receiving from the trunk line on which its mill was built. The record makes it clear that the trunk lines were bidding for the traffic by offers of increased allowances, and that the lumber companies, the real beneficiaries, were selling their traffic for the allowances.

The main or tap line in a few instances has acquired a part of its right of way by condemnation proceeding. Ordinarily, however, the lumber company not only owned the real estate where the mill is, but all the property through which its tap line runs. In many cases care has been taken to deed the right of way to the incorporated railroad company; but in a large number of cases the tap line enjoys only a lease of its right of way. In some cases this is a tenancy at will, no written lease having been executed. In a number of cases the public carrier has supplied the rails used by the tap line on a nominal rental basis; in some cases both the rails and the equipment are owned by the lumber company and are leased to its tap line. The result in such cases is that the tap line, even though incorporated as a common carrier, has no really permanent character. The record discloses several instances where they have not only abandoned their operations but where the rails have been torn up. The Ouachita & Northwestern Railroad is such an instance. Fourteen miles of the

main line of this tap line were taken up notwithstanding the fact that it had served a number of good farms and had moved some agricultural products for the farmers. When asked how their traffic was now being moved, the witness for this line said that the farmers hauled it for themselves over the country roads. There was another small mill on this tap line, said to belong to outside interests; it is now draying its lumber to the public carrier that moves it to the markets. The Kendall & Sulphur Springs Railway went out of business as a common carrier after its pine lands had been cut over. It is still operated, however, as a facility of the lumber company, which is now manufacturing hardwood lumber. The explanation made is that the public carriers declined to give it allowances on hardwood, and it gave up the claim of being a common carrier, although it had some traffic from outside interests. There are other cases of tap lines operated as an alleged common carrier that were bodily removed when the forests had been cut over, and reconstructed through other forests of the lumber company. The record is not free from instances where the mill, rails, equipment, and all the other property of a lumber company were removed to a new territory. With a few exceptions there is scarcely a tap line on the record that would not necessarily cease its operations if the lumber mill of the proprietary lumber company were moved or ceased to run. Instances are shown of record where the tap line stopped running while the mill was temporarily shut down.

A few of the tap lines are incorporated as common carriers of freight and not of passengers. In most cases a caboose is the only car available for passengers; but several of the lines named on the record operate one or more passenger trains daily. A few run a passenger coach in their log and lumber trains; but many have no real passenger traffic and make no charge against the farmers and others who occasionally ride on the locomotive or in the caboose.

Different lumber companies move their logs from their forests to their mills in different ways. Ordinarily all the operations in the forest are conducted by the lumber company; the trees are felled by its employees and the logs are usually loaded on the cars by its steam loaders. Ordinarily they are hauled over the logging road by the lumber company with its logging engines to the point where commences what we have referred to as the incorporated tap line. They are ordinarily hauled thence to the mill by tap-line locomotives. In many cases, however, the tap-line locomotives run up into the forest and haul the log trains over the logging roads to the tap line and thence to the mill. In other cases the lumber company hauls the logs directly from the forest over its logging road and thence under trackage rights over its incorporated tap line to its mill. There

are about as many cases where the tap line receives no pay for the trackage rights as there are cases where the lumber company goes through the form of paying it some compensation for the use of its tracks. When its locomotives go into the forest and haul the logs over the logging road to its own rails the incorporated tap line, in the usual case, makes a charge against the lumber company for the service. But ordinarily no charge is made against the lumber company by the tap line for hauling the logs over the incorporated line to the mill. This part of the service is supposed to be covered by the allowances paid to the tap line by the public carriers. In some cases the employees of the tap line participate in loading the logs on the cars in the forest, and in some cases they unload the logs into the pond at the mill. Where this is done the service is supposed to be covered by the charge made by the tap line against the proprietary lumber company. Ordinarily, however, both the loading and unloading are done by employees carried on the pay rolls of the lumber company.

It is only in a few cases that any waybill or bill of lading is issued to cover the movement of the logs to the mill. This is true even where the rates are constructed in the form of milling-in-transit rates. In many cases the conductor of the logging train does not even hand in a slip to indicate the quantity of logs brought in to the mill. When the manufactured lumber goes out, billing is issued by a tap line or lumber company employee and in most cases dated on the day the lumber is tendered to the public carrier for transportation. This is done by an agent of the tap line who is sometimes exclusively employed by it, but is more often an employee of the lumber company; in many cases he is also the agent of the trunk line at the junction point. When no allowance is made, the mill is shown as the point of origin; but if the lumber is destined to an interstate point it gets an allowance and the other end of the tap line is shown on the billing as the point of origin.

There are cases shown of record where tap lines receive allowances, in one case as high as 4 cents per 100 pounds, on lumber as to which they perform no service whatever, either on the logs in or the lumber out. In another case the tap line does not reach the mill, but the logs are taken across a river by a conveyer running on a cable. The finished lumber is handled out of the mill by the trunk line. Nevertheless the tap line receives an allowance of 4 cents per 100 pounds on the theory that the lumber has originated at the other end of the tap line in the woods. When questioned, the witness for this road frankly admitted that his tap line performed no service whatever on the outbound lumber and that the allowance received was not paid to it for any transportation service but was a payment "for developing the traffic." In another somewhat similar case the unincor-

porated logging road reaches the river and the logs are floated thence across to the mill. The lumber is hauled by the incorporated tap line from the mill to the trunk line, a distance of 2½ miles. Out of an 18-cent rate to St. Louis the tap line, which has no outside traffic, receives 4 cents for its haul or twice the rate under the state switching tariff, while the trunk line retains 14 cents for a haul of nearly 400 miles to destination. In all but a few exceptional cases the mill is located within an ordinary switching distance from the tracks of a public carrier and the latter is therefore able readily to handle the lumber out of the mill without the intervention of the tap line.

In general it may be said of all but a few of these incorporated tap lines that they have no real freight stations and are not otherwise equipped properly to handle less than carload freight or general merchandise; all claims to the contrary are shown by the record to be a mere pretense in most cases. and this is generally understood. Points on tap lines shown on the tariffs can often be located by no visible landmarks and have no real existence. Their so-called general offices are usually in the offices of the lumber companies; their accounts are very often kept by the bookkeepers of the lumber companies. Their cash often is kept in the same bank account with the cash of the lumber company, and in some cases the lumber company's checks are used for paying tap line bills. Not infrequently the allowances are paid by the public carriers directly to the lumber company for the account of the tap line, there being no other way to handle the transaction. And in practically all cases the officers of the tap line are also officers of the lumber company and the salaries paid to them are ordinarily shared in by each company. The free passes that they receive in their capacity as railroad officials are used by them when traveling in the interest of the lumber company. This was frankly admitted.

One feature in the distinction drawn by lumber companies between their incorporated tap lines and their unincorporated logging roads must not be overlooked. As just explained, when the tap line does not own its right of way it usually holds it under a formal or informal lease from the lumber company. But the lumber company never surrenders its ownership and absolute control over the logging roads. And there is a definite purpose in that course. It is ordinarily explained that the logging roads are more or less temporary in character, while the tap line is built in a more permanent way. But this explanation, while having some foundation in fact, is not complete. In most cases the tap line extends through lands of the proprietary lumber company that have already been cleared of pine and where hardwood only remains, or through pine forests that for some reason it is not lumbering; the logging roads reach beyond into its forests where its lumber operations are being conducted and often in the direction of forests owned by outsiders. In the usual case

the incorporated tap line is not so located as to be easily available to outside interests, while the unincorporated logging roads often closely approach the forests that are owned by others. While Mr. Foster, president of the Malvern & Freeo Valley Railroad, the tap line of the Wisconsin & Arkansas Lumber Company, was on the stand, he was asked why the tracks of his incorporated line ended at Landers and why the very extensive logging road of his company had not also been turned over to his incorporated company. He first declined to answer, but when told that the question was a proper one and that he must answer, he replied:

The reason we did not incorporate the tap line into the timber was because we wanted to control the timber in that section of the country so no outsider could come in and acquire it.

Other witnesses admitted that a lumber company, by retaining the direct ownership of the logging roads, acquires a virtual monopoly of the adjacent forests. Moreover, it is demonstrated by the whole record that the tap lines being constructed by and in the interest of their respective lumber companies are not only laid out but are operated so as best to serve the interests of the lumber investment.

GENERAL PRINCIPLE CONTROLLING THE CONTROVERSY.

Upon the record some 99 tap lines in the territory in question have laid before us their claim of a right to receive allowances and have disclosed their history, their manner of operation, and their relation to their respective mills. Naturally, there are wide differences in the way in which their operations are conducted. From a careful examination, however, of all the facts disclosed of record we have arrived at certain general conclusions that must control and guide us in the disposition of these cases:

The notion seems to prevail in the yellow-pine district west of the Mississippi River that a common carrier must be an incorporated company; on the other hand, it is also claimed that a company incorporated as a common carrier is a common carrier in law for all purposes, regardless of all other considerations. This, however, is not a sound view of the matter. In some of the states the local law permits only incorporated companies to act as common carriers by rail; and, as a matter of fact and practice, common carriers by rail are usually incorporated companies. At the moment we recall no exception. Nevertheless, the act to regulate commerce specifically applies "to any corporation or any person or persons" engaged in the transportation of passengers or property by rail from a point in one state to a point in another state. It follows, therefore, so far as interstate transportation is concerned, that incorporation is not a condition precedent to the right to be a common carrier by rail.

That relation to the public may lawfully be sustained, with respect to interstate traffic, by individuals or partnerships or other associations. The inquiry with this Commission, therefore, is not whether a railroad company has been incorporated, but whether the company or the person claiming to be a common carrier by rail is a common carrier in fact. If there is a holding out as a common carrier for hire, and if there is an ostensible and actual movement of traffic for the public for hire, generally speaking, the status of a common carrier may be said to exist, whether the holding out is by a company or by an individual. But such a holding out and the existence of an actual traffic is not conclusive in all cases. Where the holding out is in furtherance of a plan to secure unlawful advantages and the alleged carrier is able to pick up some traffic that is incidental to that purpose, it must be regarded simply as a cloak or device to effect unlawful results. This Commission, in the enforcement of the law, is necessarily bound to ascertain the real purpose and object of the holding out; and in the prevention of preferences and other unlawful consequences it is entitled to and must ascertain the real situation. In other words, whether a company or a person claiming to be a common carrier is a common carrier at all and for all purposes is a question of fact, and whether the service performed for a particular person is a service of transportation or an industrial service is also a question of fact.

It follows from that view of the matter that the common ownership of an industry and of a railroad that is held out as a common carrier and has some actual traffic for the public for hire is not in itself sufficient to divest the railroad of its status as a common carrier. On the other hand, the fact that the rails, locomotives, and cars of an industry have been turned over to an incorporated railroad company, owned and operated by the industry or in its interest, does not divest those appliances of their character as a plant facility if such in fact is the case. If the rails were laid and the equipment acquired for the use of the industry as a facility in the process of manufacture and production, and are so used, the fact that some outside traffic may be carried over the same rails does not modify the character of what is done over them for the industry. We must look at the thing done and scrutinize the manner in which it is done. We must ascertain what is its real relation to the industry. If in such a case the tracks and equipment are a facility of the plant and are so used in the process of manufacture, what is thus done for the controlling industry can not be regarded as a service of transportation. It is clear that a division allowed by a public carrier out of the rate under such circumstances is a rebate to the industry. But again, it must be added that the real relation of the tracks and locomotives to the industry is a question of fact that is not controlled by considerations of

mere ownership, but by a correct understanding of the service thus performed for the controlling industry.

EACH CASE MUST STAND ON ITS OWN FACTS.

The number of industries that use rails and locomotives in connection with their manufacturing operations is increasing, and there is a growing number of cases where allowances out of the rates are made to them by the regular lines. It is clear, therefore, that the time has come when the Commission must draw a line at some point between what is transportation and what is industry, and must distinguish between what is a facility of transportation and what is a plant facility or a tool of the industry. In the present state of the law it is no less clear, however, that the question is not susceptible of solution on general grounds; that no general rule or principle may be laid down that will do exact justice in all cases; and that the only safe course is to ascertain and determine on the facts disclosed in each case what is the real relation between the tap line and the industry by which or in the interest of which it was constructed and is now operated. With that view of the matter in mind we have carefully analyzed the testimony offered by each of the tap lines appearing of record and shall presently state each case in a summary outlining the features shown of record that we regard as of importance.

Before doing that, however, it may be well to look for a moment into the practice of the trunk lines in this territory in connection with their lumber traffic:

It is our understanding that in some cases the trunk lines have connected their rails with the mills by constructing spur tracks at their own expense; in other cases they have furnished the rails and the ties and the lumber companies have borne the expense of the grading and construction, and in a number of cases the lumber companies have built the connection entirely at their own cost, either directly or through their tap lines. In some instances the original spur or switch track built by the trunk line to the mill still remains and could be used; as a matter of fact, however, the tap-line connection subsequently built is actually used. In some cases, where the tap line has connected the mill with the trunk line, the spur track of the trunk line to the mill has been torn up. In some instances the trunk line is still closely connected with the mill by an available switch track, but in order to give the appearance of a real service the tracks of the tap line have been laid parallel to the trunk line to a more distant switch connection.

In all cases it is apparently the practice of the trunk lines, where no allowance is made, to set the empty car at the mill and to receive

the loaded car at the same point. Indeed, they do this in many cases even when an allowance is made to the tap line. But whenever this service is performed by the trunk line, it is included in the lumber rate and is done without additional charge. In some instances the switch or spur track connecting the mill with the trunk line is as much as 3 miles long. In other words, by their common practice the public carriers interpret the lumber rate as applying from mills in this territory apparently as far as 3 miles from their own lines. So far as the manufactured lumber is concerned, it may therefore be said that where a mill has a physical connection with a trunk line and is not more than 3 miles distant the transportation offered by the trunk line commences at the mill. If, therefore, a lumber company, having a mill within that distance of a trunk line, undertakes, by arrangement with the trunk line, to use its own power to set the empty car at the mill and to deliver it when loaded to the trunk line it is doing for itself what the trunk line, under its tariffs, offers to do under the rate. In such a case the lumber company may therefore fairly be said to furnish a facility of transportation for which it may reasonably be compensated under section 15 whether its tap line is incorporated or unincorporated. In other words, the lumber company thus does for itself what the trunk line does with its own power at other mills without additional charge and what it must therefore do for the particular lumber company without additional charge. Under such circumstances we think the lumber company, under section 15, may have reasonable compensation when it relieves the trunk line of the duty. But an allowance under such circumstances is lawful only when the trunk line prefers, for reasons of its own and without discrimination, to have the lumber company perform the service. It is not lawful when the lumber company refuses to permit the trunk line to do the work. No allowance, however, ought to be made by a trunk line to a lumber company where the mill is within, say, 1,000 feet of the trunk line. We should regard an allowance under such circumstances as a mere device to effect an unlawful payment to the lumber company. We should take the same view of an allowance where a short switch track to the mill has been torn out or is still available but not used in order to give the appearance of a longer haul to the mill over a spur or switch track constructed by the lumber company or by its tap line.

Where a mill is distant more than 3 miles from a trunk line and is connected with the latter by a tap line not recognized by this Commission as a common carrier in respect of the service performed for its proprietary lumber company, no allowance or division may lawfully be made by a trunk line either to the lumber company or to its tap line. Such a lumber company, although using rails, stands in no

better position under the law with respect to its lumber than does a lumber company that uses other means of delivering its lumber to a public carrier. But where a mill is more than three miles distant from a trunk line and is connected with it by a tap line organized as a common carrier and so recognized by this Commission, the mill is to be regarded as a shipping point equally with all other mill points in the extensive rate group which the trunk-line carriers have defined in this territory; and the lumber rate is to be regarded as in effect from the mill, the tap line being entitled to a division thereof according to the extent of its participation in the through service under the through rate.

This view of the matter, it must be clearly understood, is based upon the particular conditions that we find existing in this lumber territory and the rate adjustment which there obtains. We shall not endeavor at this time to fix the allowances that may be made under section 15 to a lumber company furnishing a facility for the transportation of its lumber from its mill in the manner and under the conditions described or to fix the divisions on the lumber haul that may be paid by the trunk lines to tap lines herein found by the Commission to be common carriers. The basis of such allowances and divisions may be proposed by the trunk lines for our approval after conference with the parties in interest. In submitting the matter to the Commission it will be well also to make a more complete statement as to the distance of the mills to which the trunk lines now extend the lumber rate without additional charge for the switching service that they perform. It will, of course, be understood that the allowances and divisions so submitted must have a proper relation to the service performed and be such in amount as not to effect a rebate to the industry. It must also be understood that a tap line herein recognized by us as a common carrier can not expect to continue to be so recognized if it does not itself recognize its obligations as a common carrier under the act to regulate commerce by conforming its accounting methods to the requirements of the Commission, by filing annual reports and lawful tariffs, by obeying the hours of service law and the safety-appliance acts, so far as they are applicable, and otherwise fulfilling the obligations and duties imposed by the act on carriers engaged in interstate commerce. We have no authority to overlook the failure of any company claiming to be a common carrier to fulfill all the requirements of the act and to comply with the rules and regulations of the Commission; and we shall regard any omission of its duty in this respect by a tap line as tending to show that its claim to be a common carrier is a mere device or attempt to justify allowances and divisions.

THE LOG MOVEMENT TO THE MILL.

It may be well at this point to make a brief reference to the haul of logs to the mill. Lumbering is one of the primary occupations and lumber products are as necessary and even more widely used than are the products of coal mines. Lumbering processes are more or less familiar to everyone. The forest must be made into logs and the logs must be drawn to the mill and there converted into lumber. Whether this is done with ox teams or horses, on wagons or sleds, or the logs are floated down a stream to the mill or are carried there in flumes or otherwise, the service that the lumberman thus performs for himself is industrial and not a service of transportation. When the adjacent timber has been manufactured there is an economy in reaching the more distant timber by the use of rails and locomotives, and these appliances are often used in the larger operations. But the character of the thing done is not affected by the new means employed to do it. Nor do the new appliances bear a different relation to the industry. A number of witnesses admit, and the whole record shows, that a large lumbering operation in this territory can not be conducted economically without a tap line. Tracks and locomotives are as necessary to successful results from the investment as the mill itself. One or two of the companies avail themselves of streams to float the logs to the mill, but all the other lumbering operations of any magnitude in the southwest have tap lines. East of the river, as we have seen, and in the majority of instances west of the river, they are regarded, like the mill itself, as a mere plant facility. Each of the tap lines west of the river that now claims to be a common carrier was originally operated directly by the proprietary lumber company and as a part of it. The only exception to that statement is that in the case of some of the more recent investments the tap line was incorporated and the track laid while the mill was being constructed. With one exception and regardless of the date of their construction, every tap line now before us is owned by or in the interest of a lumber company, and with one exception was built by the same people that own the forest and the mill, and with no other real object than to serve the mill as a necessary plant facility. That is their present primary purpose and use and no pretense to the contrary is made.

It is said that parts of the trunk lines now serving this territory were originally tap lines. That is true, and it may be, when the timber is cut away, that parts of this country may develop and some of the tap lines now under consideration may ultimately pass into the control of the trunk lines. This, however, can not be accepted as an excuse for the continuance of discriminations that now exist for allowances that amount to unlawful concessions from the

rates. With a very few exceptions not one of the tap lines before us would continue to operate if the mill by which, or in the interest of which it is owned should cease to run; they were all built to serve the proprietary mill and the incorporation was an afterthought developed out of the keen competition of the trunk lines for the traffic. Their real relation to the industry is primarily nothing but that of a plant facility, and such outside traffic as they are able to pick up is purely incidental. With one or two possible exceptions not one of them would have been built or would now be operated for the outside traffic only; not one of them would cease its operations if deprived of the outside traffic altogether, for it is a part, and a necessary part, of the lumber investment; and with two or three exceptions not one would continue in operation after the mill to which it belongs had been shut down. In other words, with very few exceptions they are purely plant facilities.

As we have seen, this is the theory upon which the lumber interests in general are to-day manufacturing their lumber and competing with one another in the general lumber markets. It is the theory that prevails in the yellow-pine district east of the Mississippi River, and is the theory upon which a majority of the lumbering operations west of the river are conducted. They are hauling their logs to their mills at their own cost and with facilities that they regard as a mere adjunct to and a part of the machinery of manufacture. It is clear, then, that appliances that are generally regarded by the lumber interests themselves not only as mere plant facilities, but as necessary facilities in the successful conduct of their investments, can not reasonably be held to become the transportation facilities of a common carrier merely because a lumber company has incorporated a small railroad company and turned the facilities over to it. There must be something more substantial than a mere manipulation of the situation in order to change the real relation of these facilities to the industry. As with the movement of lumber from the mill, so with the movement of the logs to the mill, we must necessarily hold that it is an industrial service pure and simple, except when performed for the lumber company over the rails and with the power and equipment of a tap line that is a common carrier not in form only but in fact as well. And here, again, we find it impossible to lay down any general rule or principle by which in all cases it may be determined whether the movement of logs from the forest to the mill is transportation under the act or merely an industrial service. Each case must stand upon its own facts. But two conditions are clearly essential in all cases: No tap line that is, in fact, a common carrier engaged in interstate commerce may haul the logs to the mill of the proprietary company free of charge, as is the case in many of the instances before us. A free service is inherently unlawful.

Nor may a trunk line set up a milling-in-transit privilege with a common carrier tap line by which the lumber rate is extended back through the mill point to the tree in the forest unless it pursues the same course with respect to forests on its own line. That would be an unlawful preference. In this lumber territory the trunk lines make net rates for a log haul over their own rails when they have the lumber movement from the mill. These rates vary, but a typical tariff now before us makes a net rate of 2 cents per 100 pounds for a log haul of 25 miles, and 2½ cents for a haul of 50 miles, the established rate from the mill being collected on the outbound lumber. On the other hand, in many cases the rate adjustment with tap lines is such that the lumber rate is extended back through the mill to the tree in the forest in such a way as to include the log haul to the mill. It will suffice to say that any milling-in-transit rates proposed for our approval with a tap line recognized by the Commission as a common carrier must be adjusted on a nondiscriminatory basis, and the tap-line division, as heretofore stated, must be fixed in an amount that will not effect a rebate to the industry.

USE OF PASSES BY TAP-LINE OFFICERS.

With scarcely an exception the officers of the tap line are officers of the lumber company in the interest of which it is owned and operated. Throughout the record it was frankly admitted that they make use of the privilege of free transportation extended to them by the trunk lines even when traveling on the business of the lumber company and in the capacity of an officer of the lumber company. In one case "car and party" passes are shown to have been used. This is another of the advantages to industries that own short lines serving their plants, and which they have caused to be incorporated as common carriers. The use of such free transportation we regard as altogether improper and unlawful, even though the holder may be an officer of a tap line that we have found to be a common carrier. The affairs of the proprietary lumber company are so interwoven with the affairs of the tap line as to make it impossible to admit the right under the law of an officer of a tap line to use free transportation.

THE INDIVIDUAL CASES DESCRIBED.

To these general observations it may fairly be assumed that no valid objection can be made, for what is a plant facility can not also be a common carrier for the plant, and what is an industrial service can not also be a service of transportation. These principles, we think, should be applied to each of the companies whose affairs are now to be stated. In the brief summary that follows we have endeavored to outline the history of each tap line, its ownership, physi-

cal condition, the nature and source of its traffic and revenues, and the manner in which its operations for the proprietary company are conducted. Our finding is that in none of the cases that follow does the tap line perform a service of transportation as a common carrier either in the movement of the lumber of the proprietary company from its mill to the trunk line or in the movement of its logs from the forest to its mill.

MALVERN & FREEO VALLEY RAILWAY.

The entire capital stock is owned by the stockholders of the Wisconsin & Arkansas Lumber Company—"a community of interests; they are both held by the same stockholders." This statement was made by the president of the tap line, who is also president of the lumber company; he admitted that both properties constitute practically one investment, and this is also admitted on the brief. In its report for 1910 it appears that all the stock of the tap line is now held by the president of the lumber company as trustee for its stockholders. None of the officials of the tap line receive any salary from it, but all are under salary by the lumber company.

The tap line extends from a point near the mill to a logging camp in the forest called Landers, a distance of about 9 miles. The legal title to this track is in the tap line. The track leading through the mill yards to the junction with the Rock Island and Iron Mountain, a point called Walco, is owned by the lumber company, but is leased to the tap line. There is no industry at Walco other than the mill nor any at Landers. The lumber company has a commissary store at the mill and another in the woods. There is a rough, temporary board shed at Walco, but no station or agent at Landers.

The mill and the road were constructed at the same time and together went into operation during the spring of 1902. At this time the tap line was owned directly by the lumber company. The mill was built on the Iron Mountain tracks; at that time the Rock Island terminus was at Malvern, a mile and a half away. While this condition existed the Iron Mountain had the bulk of the traffic and paid an allowance for it, although an occasional carload reached the Rock Island at Malvern, being switched there by the Iron Mountain.

In 1905 the Rock Island built to a point within a half mile of the mill. Its approach was accompanied by an understanding, afterwards reduced to contract, by which the Rock Island agreed to make an allowance of 3 cents per 100 pounds and the lumber company agreed to give the Rock Island the bulk of their tonnage. We shall not stop to go into the details of the contracts between them. Under their terms the Rock Island now gets 66⅔ per cent of the outbound shipments of the lumber company; and it reserved the right to fix rates inbound and outbound both on lumber and other traffic,

whether handled by the tap line for the lumber company or for the public. Another feature of the agreement is the provision that in case the allowance is declared illegal by this or any other commission or by any court it shall no longer be payable or shall be modified as the circumstances may require, and that in such case no claim or demand will accrue against the Rock Island. The lumber company is a party to these contracts.

The proximity of the Rock Island and its offer of such a traffic arrangement was followed by the incorporation of the tap line, which thereupon acquired the equipment of the lumber company and the right of way from the mill to Landers. This was accomplished by an exchange of its capital stock. No money passed and no further stock has been issued since the transaction was completed. When asked why the tap line had been incorporated, its president replied that it was done for the express purpose of legalizing the allowance. The tap line has no passenger, mail, or express business. Out of revenues of $41,131.40 for the year 1910 its outside traffic is stated at $2,058.17. In 1909 its outside traffic aggregated $241.67, and for 1908 it amounted to $90.47. An examination develops the fact that of the outside traffic claimed for 1910 $1,985.61 was for oak staves and stave bolts, all of which doubtless came from its own forests. The other traffic claimed for outsiders during that year consisted of four carloads of fertilizer and one carload of brick, on which was collected the local state rate. If it had any such traffic in 1910 or 1911, it was so inconsiderable that it was not thought worth while to show it on the annual reports to the Commission for those years.

The line ends, as heretofore stated, at Landers. From that point the lumber company owns 17 miles of logging road radiating into its forests. Most of the rail in the logging road was supplied by the Rock Island under lease at a rental of 6 per cent on a valuation of $28 per ton. It is interesting to note that, while the tap line acquired the locomotives of the lumber company as heretofore explained, all but one of them are used by the lumber company on its logging roads. The tap line has no equipment suitable for general traffic, all its cars being logging cars specially adapted for hauling logs.

Throughout the investigation it appeared that the lumber companies are careful to draw a sharp line between the "tap line" and the "logging road," and there is much significance in this practice. As heretofore stated, while Mr. Foster, president of this tap line and also president of the lumber company by which it is owned, was testifying it appeared that it was the desire to legalize the allowance that led to the incorporation of his tap line to Landers and the desire to monopolize the forests and thus control the timber that led the lumber company to retain the ownership of the logging

road beyond Landers. The Wisconsin & Arkansas Lumber Company has added 35,000 acres to its original holding of 75,000 acres of timber lands. Of this total holding about 65,000 acres are still uncut and will yield 500,000,000 feet of lumber and keep the mill and its tap line in operation for 12 or 14 years. At the expiration of that period Mr. Foster did not know whether the tap line would be taken up, as has happened in a number of cases, or whether it would continue in operation.

As hereinafter appears, the logs are hauled by the tap lines or logging roads of lumber companies under a variety of conditions. In this case it appears that after the logs have been loaded by the lumber company on the cars the locomotive of the incorporated tap line runs up into the woods over the unincorporated logging line and hauls them to the point called Landers; from that point it hauls the cars over the tap-line tracks to the mill, where the logs are unloaded into the mill pond by employees of the lumber company. The tap line makes a formal charge against the lumber company of 80 cents per thousand feet, log scale, for hauling the logs over the unincorporated logging tracks to Landers. It makes no charge against the lumber company for hauling the logs from Landers over the incorporated line to the mill.

There are no bills of lading, waybills, or other shipping papers covering the movement from the forest to Landers; nor is there any billing covering the movements of the logs from Landers to the mill at Walco. When the manufactured lumber is ready for shipment it is loaded by the employees of the mill on cars furnished by the Rock Island or Iron Mountain, which are switched from the mill to these lines by the tap line, a distance of a few hundred feet in the case of the Iron Mountain and half a mile in the case of the Rock Island. A bill of lading is then issued by the agent at Walco, who is a joint employee of the Iron Mountain and of the Rock Island; it is dated on the day the lumber is tendered for transportation and shows Landers as the point of origin and not Walco. The tap line receives out of the rate 3 cents per 100 pounds, which is equivalent to from $12 to $18 for carloads of 40,000 to 60,000 pounds. Its president says that the carriers "should pay if they want the tonnage."

WILMAR & SALINE VALLEY RAILROAD.

This tap line extends from Wilmar due south 12 miles to Godwin, both in the state of Arkansas. From the latter point 15 miles of logging roads reach in to the timber. All are owned by the Gates Lumber Company, its mill being at Wilmar, where the tap line joins the Iron Mountain. Godwin is a place of 30 or 40 people, most of whom are company employees; the place seems also to be known as

Bailey. At one time the tap line ran to the north of the mill, but this track was removed, the lumber company now doing its logging south of the mill. The equipment is owned by the lumber company but is leased to the tap line without charge. The officers of the two companies are practically identical. The lumber company and the tap line have the same paymasters. The tap line files annual reports and claims to keep its accounts as prescribed by this Commission. It also claims to be recognized as a common carrier in Arkansas. While separate books of account are kept, the cash of the tap line is kept with the company cash in the same bank, and all checks are drawn by the lumber company for the tap line. It has no revenues from passenger, mail, or express service. At the time of the hearing a witness said that there was a prospect of moving three carloads of cotton seed; but although it is said to reach some good farming country the annual report for 1910 shows no freight other than forest products.

The tap line has no joint rates with the Iron Mountain to interstate points except on lumber from Godwin, at its farther end. The rate is made by adding 2 cents to the Iron Mountain rate on lumber from its junction with the tap line at Wilmar. The tap line division is 4 cents, which gives it a net allowance of 2 cents. There is no outside mill on this line, and such a rate adjustment would necessarily discourage the erection of a mill by outsiders, for while it would enable the mill of the Gates Lumber Company, owning the tap line, to compete on an even basis with mills elsewhere, it would put an outside mill erected on the line at a disadvantage of 2 cents per 100 pounds.

The lumber company hauls the logs over the logging lines to the tap line, while the tap line hauls them thence to the mill. On state shipments the mill is shown as the point of origin; on interstate shipments Godwin, the other end of the tap line, is shown as the point of origin. When asked for an explanation of this difference in the billing, the reply was made that it was not necessary on state shipments to show Godwin as the point of origin because no allowances were paid on any but interstate shipments, and the actual point of origin is therefore shown. From the mill to the Iron Mountain tracks, a distance of 2,000 feet, the manufactured lumber is hauled sometimes by the tap line, but more usually by the Iron Mountain. At the time of the hearing the tap line was doing most of the service, because of the temporary disability of the Iron Mountain engines. The net operating revenue to the tap line for the year 1909, after making substantial allowances for maintenance of way and structures, maintenance of equipment, and transportation expenses, is shown at the sum of $24,872.43. For 1910 it amounted to $29,778.02. Its capital stock amounts to but $50,000 and is said

to represent the actual cost of construction; the dividends shown as paid during the year 1910 aggregated $28,164.02, or more than 50 per cent on the investment. These figures, drawn from its own reports without any further examination as to details, include the sums credited to the tap line by the lumber company for its services on the logging road. Accepting its own figures, it appears that the entire operating expense of the tap line, including the cost of its service on the logging road, was substantially made good by the Iron Mountain for both years through its allowances.

ARKANSAS & GULF RAILROAD.

The Kimball Lumber & Manufacturing Company is unincorporated and is owned largely, if not entirely, by Mr. Phin Kimball. The tap line of the company is incorporated as the Arkansas & Gulf Railway. It extends from Kimball, in the state of Arkansas, across the state line to Laark, in the state of Louisiana, a distance of seven miles. Kimball is not a town and is now even without a station, one built by the Iron Mountain having been destroyed by fire. It is simply a point of interchange between the tap line and the Iron Mountain. Laark is a company town owned by Mr. Kimball. There is a post office and Mr. Kimball is the postmaster. There are about three miles of logging spurs extending into the 35,000 or 40,000 acres of timber there owned by Mr. Kimball. The tap line was incorporated in 1905, but no capital stock has been issued. It has a bookkeeper, timekeeper, an agent at Laark, "and a lady accountant at St. Louis." There are no stations or station buildings, and the agent at Laark is also in the company's store at Laark owned by Mr. Kimball. Upon inquiry it appears that Mr. Kimball understood that he owned the tap line, but that he "has a few local partners who own between $300 and $400 in the investment." Automatic couplers are not used on the logging cars, because the road is so rough they will not stay coupled. Passengers are carried between Kimball and Laark upon a motor car; it also takes the mail. There are no passenger tickets, fares being collected in cash. This traffic does not seem to be covered by a lawful tariff, although as the tap line crosses the boundary line between the two states it is necessarily interstate traffic. There is no development in the surrounding country, such farms as formerly existed there having been abandoned, and there is no traffic to speak of except that of the lumber company. The present source of the outside traffic of the tap line is thus described by Mr. Kimball in a letter filed in lieu of a brief:

I have designated by writing the word "Ranch" on the map where residents live, which you will note are six—this is all—and these six will not average 25 acres each, and doubt if 15 acres each of cultivated lands. They have hogs and cattle that run "wild" in the forest, free of cost, and that is the cause of the "clearings" at those points.

The mill is at Laark, and the tap line enters a charge of $1.50 per car for hauling the logs from the several spurs to the mill. During the year 1909 it hauled 3,000,000 feet of logs from the forests near Kimball. For hauling the manufactured lumber back from Laark to Kimball the Iron Mountain allows the tap line from 2 to 3 cents a hundred pounds, but as the rate on lumber from Laark is 1 cent higher than the rate from Kimball the net amount accruing to the tap line is 1 and 2 cents. Although Mr. Kimball is president and traffic manager of the tap line, he receives no salary from it, but does enjoy free transportation over the trunk lines, and uses passes when traveling on the business of his lumber company.

A reading of the testimony of this witness does not give an adequate impression of the humor with which he offered it, or the amusement with which it was heard by those present. Rudimentary as was his effort to give a legal form and appearance to the separation of the tap line from his lumber company, his case does not differ substantially in that respect from many other instances on the record. Many of the Arkansas tap lines are chartered with the health resort known as Hot Springs as a terminus, but none had reached that point at the date of the hearing, nor was any prospect shown by any tap line of such a fulfillment at any time in the future of its charter powers. Mr. Kimball, in a letter addressed to the Commission after the hearing, explains the future prospects of his railroad in this wise:

As I have before stated. The Arkansas & Gulf Railroad is going to be built *somewhere—either south, east, or northwest*, or likely both. It was started with that full intention, and was stopped because railroad building was stopped in that section generally, and it now needs help, more than ever, and not a "knock." Please help me boost it.

While this seems somewhat indefinite it is in fact no less definite than are the plans for future extensions put forth by many others.

The Arkansas & Gulf tap line differs from the great majority in that the mill was not built on the tracks of the trunk line but 7 miles away in the forest, and the manufactured lumber is therefore hauled by the tap line for that distance. Mr. Kimball explains the location of the mill by saying that while it is a costly enterprise to build a manufacturing plant in the woods away from the main line and he could have saved thousands of dollars by building it on the tracks of the Iron Mountain, he always thought the railroad "was the best part of the proposition."

LITTLE ROCK, MAUMELLE & WESTERN RAILROAD.

The Little Rock, Maumelle & Western Railroad extends from a on with the St. Louis, Iron Mountain & Southern about 3 th of Little Rock, Arkansas, westward for 16 miles to a point Maumelle, from which unincorporated logging spurs, ag-

gregating about 10 miles in length and owned by the Neimeyer Lumber Company, radiate into the woods. The tap line, which has issued capital stock to the amount of $160,000 and 6 per cent bonds for $132,000, is substantially identical in interest with the A. J. Neimeyer Lumber Company. The stockholders of the tap line are stockholders of the lumber company, and most of the bonds are owned by stockholders of the lumber company.

The timber holdings of the lumber company, which are extensive, were acquired from the St. Louis, Iron Mountain & Southern Railroad Company in 1904. The tramroad was built two years later by the lumber company from the junction with the Iron Mountain for a distance of 7 miles into the timber; in 1907 it was extended 2 or 3 miles to a point known as Carnes; and in 1908 it was completed to Maumelle. The separate railroad corporation was not formed until 1907, and took over at that time the tracks already built and operated by the lumber company.

It is important to observe that the tap line parallels the line of the Rock Island, which is at no point more than 5 miles away. The intervening country is hilly and broken. Three towns are mentioned on the record as being reached by the tap line. Becker is a sawmill settlement, its only other industries being a brick plant and the penitentiary; at Carnes there is a small hardwood mill, which cuts hardwood lumber for the Neimeyer Lumber Company, at a charge of $3 per 1,000 feet; and Maumelle, otherwise known as Douglas, is apparently only a logging camp. There are two or three small stave shippers on the line.

Two regular trains are run daily in each direction; their principal load is logs, but they also carry some passengers, who pay cash fare. The revenue from that source in 1911 was $2,223.11. The equipment consists of one locomotive, a combination caboose for the carriage of passengers and less-than-carload freight, several work cars, and a few flat cars. There is also a motor car, which was acquired from the lumber company and which is still used by its employees in the inspection of timber. All the equipment is second hand and was purchased very cheap.

The mill of the Neimeyer Lumber Company is located about three-fourths of a mile from the junction with the Iron Mountain, but the distance from the sawmill and planing mill to the actual point of interchange where cars are delivered to the Iron Mountain is about one-eighth of a mile. The main track of the tap line runs through the lumber plant. The logs are hauled over the unincorporated logging spurs to the point known as Maumelle, by employees of the lumber company, which owns and operates for this purpose three locomotives and 70 logging cars. From Maumelle the loaded cars are hauled by the locomotive of the tap line to the pond, where the trainmen assist

the employees of the mill in unloading the logs. For the movement of the logs from Maumelle to the mill the tap line charges the lumber company 2 cents per 100 pounds, but 40 per cent of this amount is subsequently refunded, pound for pound, when the lumber is shipped out. The tap-line engine switches the empty cars furnished by the Iron Mountain and switches the loaded cars from the mill to the point of interchange with the Iron Mountain, a distance of about one-eighth of a mile. This service is paid for by the divisions, where joint rates are in effect. There are joint rates to practically all points except destinations in the states of Arkansas, Oklahoma, Louisiana, and Texas, the joint rates being uniformly 2 cents higher from points on the tap line than from the junction point. The tap line receives a division of 5 and 6 cents per 100 pounds, which includes the 2-cent arbitrary. In other words, the Iron Mountain shrinks its rate 3 and 4 cents per 100 pounds. There are, as heretofore stated, no joint rates to Arkansas, Oklahoma, Louisiana, and Texas. On shipments to points in those states the tap line receives a switching charge of $3 a car, which is paid by the lumber company or its customer in addition to the rate of the Iron Mountain. The stave men who ship over the tap line to Arkansas points do not have the benefit of joint rates, but pay a local charge to the tap line in addition to the rates of the Iron Mountain. Their traffic, however, is inconsiderable in amount, the total movements of staves for the year covered by the record being 300 tons and the traffic of the hardwood lumber mill amounting to 7,000 tons, out of a total movement over the tap line amounting to upward of 105,000 tons. No other freight was shipped out over the tap line, and the inbound freight was limited to a small quantity of hay, coal, castings, and merchandise, largely if not wholly for the lumber company or its employees. The traffic of the lumber company was nearly 93 per cent of the whole tonnage.

Approximately 40 per cent of the product of the Neimeyer Lumber Company is switched by the Iron Mountain to Little Rock and delivered to the Rock Island, which absorbs the Iron Mountain charge of $3.50 per car and in addition pays the Little Rock, Maumelle & Western a division of 5 and 6 cents per 100 pounds.

The officers of the tap line, with one exception, are officers also of the lumber company, and receive substantial salaries from the tap line. Through their connections with the tap line the officers of the lumber company enjoy passes over the trunk lines, which they freely use.

The tap line is operated at a profit, its operating revenues for the year 1910 being $47,341.83, and its operating expenses, $22,607.58, including substantial salaries to its officers, who are officers also of the lumber company. The net operating revenue was therefore $24,734.25, against which is charged taxes and interest to the amount of

$22,231.12 on the bonds held by stockholders of the lumber company. It had a low operating ratio, 47.7 per cent.

The engine and cars of the tap line are repaired by the lumber company in its shops at Becker, and the cost is charged against the railroad.

BEIRNE & CLEAR LAKE RAILROAD.

The Beirne & Clear Lake Railroad is a narrow-gauge tap line built to serve the mill of the Penn Lumber Company at Beirne, Ark. The two companies are identical in interest. The tap line consists of 4½ miles of track, constructed some years ago at a cost shown on its books as $8,000; but it was not incorporated until March, 1909, being operated previous to that date as an unincorporated logging road. The lumber company also has 4½ miles of unincorporated track which it leases to the tap line for a consideration of $300 per year. The mill of the Penn Lumber Company is one-half mile from the junction with the Iron Mountain. There is also a small stave mill and a manufacturer of hickory bolts and shafts at Hartley, where the unincorporated tracks meet the incorporated tracks.

The entire traffic of the Beirne & Clear Lake consists of forest products, practically all of which is the property of the Penn Lumber Company, and on which it receives a division from the Iron Mountain of 2 cents per 100 pounds, the joint rates being the same as the rates of the Iron Mountain from the junction point. The tap line charges the lumber company $3 per 1,000 feet for hauling the logs from the timber to the junction between the unincorporated and the incorporated tracks. It operates a logging train daily and employs one train crew, a switch engine crew, and one section gang. It has nothing in the way of scales or warehouses, and its equipment is limited to 2 locomotives and 12 log cars. Its operating expenses are slightly in excess of the revenues. Although receiving a division under the claim of being a common carrier, subject to the act, it did not file an annual report with the Commission until the last fiscal year.

MISSISSIPPI, ARKANSAS & WESTERN RAILWAY.

The Mississippi, Arkansas & Western Railway, consisting of 8 miles of main track, was acquired by the Bliss-Cook Oak Company, which now controls it, in 1904 or 1905, when that company took over all the property of the Chico Lumber Company, including stock in the tap line corporation to the amount of $220,000 and bonds of the same face value. The tap line had been incorporated in 1902, and it is admitted to be overcapitalized.

The mill of the lumber company manufactures hardwood lumber and is located about 1½ miles from the rails of the Iron Mountain.

In addition to the tap line the lumber company has 20 miles of unincorporated tracks extending from the end of the tap line into and through the timber. The tap line has 4 locomotives, 20 box and flat cars, and 53 log cars. There are two train crews who work jointly for the lumber company and the tap line. It has not had through rates on lumber with the Iron Mountain for the past two or three years; and the joint rates formerly in effect were 1 cent per 100 pounds higher than the Iron Mountain rate from the junction point; the net allowance then paid to the tap line was 1 cent and 2 cents per 100 pounds. Passengers are carried without charge. Since the cancellation of the joint rates and the discontinuance of divisions a charge of about $2.00 per car has been made against the lumber company for hauling the logs over the incorporated tracks to the mill. The unincorporated tracks are operated by the lumber company itself. The tap line does not make any charge, as the record clearly states, for the less than carload movements of staves, products, and supplies, amounting to about a carload a week, which it makes for the farmers along its line. Its traffic during the year covered by the record amounted to 4,229 carloads of logs and 605 carloads of lumber. These figures are understood to include 100 carloads of logs which it hauled for a lumber company having a mill some distance away on the Iron Mountain and for which it made a charge of $2.50 per car for the movement from the loading point to the junction with the Iron Mountain. It also claims to have handled during the year mentioned five or six carloads of staves, on which it received a division of the joint rate then in effect with the Iron Mountain, and 20 carloads of stave bolts.

The annual report for the fiscal year ending June 30, 1910, shows a net operating revenue of $7,242.53 available for the payment of interest and taxes, which exceeded that amount, leaving a loss for the year. It had, however, a surplus of $12,910.13 from previous years.

The allowances which the Mississippi, Arkansas & Western formerly received were cut off by the Iron Mountain as the result of our decision in *Fathauer* v. *St. L., I. M. & S. Ry. Co.*, 18 I. C. C., 517. An opportunity was afforded in this proceeding for a full statement of the affairs of the tap line and its controlling lumber company, and the facts here briefly set forth were then developed.

BEARDEN & OUACHITA RIVER RAILROAD.

The mill of the Cotton Belt Lumber Company at Best, Ark., was erected in 1885 and is served by the St. Louis Southwestern Railway Company. The tracks and equipment which the lumber company constructed and acquired a few years later for the hauling of logs to its mill were conveyed in 1904 to a railroad corporation which it

then created, known as the Bearden & Ouachita River Railroad Company. The new corporation, as is admitted of record, was formed for the purpose of legalizing allowances out of the published rates. Its capital stock, amounting to $28,000, was distributed among the stockholders of the lumber company as a stock dividend, and the shares in the two companies are now held substantially by the same persons and in the same proportion. It has no bonded or other indebtedness, the capitalization representing the cost of the road except for some seven or eight thousand dollars expended out of earnings for betterments.

The tracks of the tap line extend from the mill at Best for a distance of 14 miles to a point known as Caney, from which unincorporated logging spurs extend into the woods. The equipment of the tap line consists of 1 box car and 50 logging cars, together with 3 locomotives, 2 of which are exclusively used by the lumber company for the movement of carloads of logs over the unincorporated spurs to Caney. From that point the logs are hauled by the tap line to the mill. The tap line makes a charge of 10½ cents per ton against the lumber company, which is intended to cover the use of the tap line locomotives and logging cars on the unincorporated spurs in the woods, and the unloading of the logs by the trainmen of the tap line at the mill. The empty cars are placed at the mill by the trunk line, which subsequently moves the loaded cars out. The tap line is accorded a division of from 1 to 2½ cents per 100 pounds out of the published rates. There are no joint rates either for class freight or for other commodities than lumber; such merchandise as is handled pays a local rate to or from the junction point in addition to the charge of the trunk line. The traffic includes an occasional carload of cotton, fertilizer, feed, or supplies, of which a substantial proportion is for the lumber company and its employees. More than 95 per cent of the tonnage, amounting for the year 1910 to 58,000 tons, consisted of logs handled for the lumber company. There is one train daily in each direction operated on an irregular schedule, on which passengers are permitted to ride without charge. The employees consist of one train crew and one gang of track men. The woods foreman of the lumber company acts as agent for the tap line at Caney.

Annual reports are filed with the Commission and show that the operation of the tap line is profitable.

ARKANSAS EASTERN RAILROAD.

In 1907 the Baker Lumber Company, whose hardwood sawmill is located on the line of the Frisco at Turrell, Ark., incorporated the main line of its logging road, extending from the mill for a distance

[illegible]

[illegible] Eastern operates [illegible] number of [illegible] other than [illegible] cotton [illegible] brief in [illegible]

[illegible] was not supplied by the [illegible] of logs [illegible] of the controlling [illegible] of the Wisarkana Lumber [illegible] about [illegible] miles distant [illegible] the tap line made a charge [illegible] tariffs indicate that an additional [illegible] movement from Turrell to [illegible] is that this tap line had filed [illegible] this is not verified on our rec- [illegible] rendered by that company to

[illegible] MISSISSIPPI RIVER RAILWAY.

[illegible] Company erected its hardwood mill at [illegible] year [illegible] and built a track 5 miles in [illegible] W[illegible] Landing, on the Mississippi [illegible] town of [illegible]xora. This track was used for hauling [illegible] to the mill and afterwards for the movement of logs

to the mill and lumber to the landing, from which the lumber is taken by steamer up the river. Later the line of the Frisco was built in through Blytheville and Luxora, and a spur track 1½ miles long was built from the mill to a connection with that trunk line at Burdette junction. The lumber company subsequently incorporated the tap line as the Blytheville, Burdette & Mississippi River Rail-Road Company, in 1906, and took $100,000 in stock and the same amount in bonds in exchange for the railway tracks and equipment. Additional stock to the amount of $40,000 has since been issued, practically all of which is in the hands of shareholders of the lumber company. The statement made in the brief is that most of the stock of the tap line is held in trust for the stockholders of the lumber company. In addition to the tracks referred to, there are three so-called branches which are apparently nothing but temporary spurs used in the logging operations of the lumber company. An extension is planned from Burdette northward to Blytheville, a town of some importance, where a connection will be effected with the Cotton Belt; and it is said that this will be for the purpose of serving the general public rather than in the interest of the mill. It will be observed, however, that if constructed the track from Burdette to Blytheville will parallel the Frisco. Moreover, the tap line as it at present exists is nowhere more than 1½ miles from the line of the Frisco. It is apparent therefore that the claims it makes for future development as a carrier serving the public are without foundation, except so far as they involve dividing the traffic of that country with the Frisco. It is said that only 41 per cent of the revenue of the tap line for the year 1910 accrued on the tonnage of the Three States Lumber Company. In other words, the statement made of record is that 9,167,500 pounds of forest products and 691,612 pounds of other freight were handled for the Three States Lumber Company, for a total charge of $2,600.24, while 19,906,512 pounds of forest products were handled for others at a charge of $3,666.88, with miscellaneous freight weighing 122,525 pounds, on which the charges were $37.60. A close analysis of these figures and other statements made of record, however, will not verify the claims made by the tap line. The principal shippers that are mentioned on the record other than the Three States Lumber Company are a small manufacturer of scythe handles, and a cooperage company, which is owned by one of the stockholders of the lumber company and obtains practically all of its raw material from the lumber company, as is admitted of record.

The equipment of the tap line consists of 4 locomotives and 19 flat cars. The lumber company owns the logging cars. There is a warehouse and platform at Burdette and a shed or station building at the river landing. The officers of the tap line receive no salaries; and the salary of the agent at Burdette, who makes out through billing, is

paid by the lumber company, whose clerks keep the books of the tap line without charge. When the mills are in operation two log trains are run daily in each direction between Burdette and the woods to the westward. Trainloads of lumber are hauled from Burdette to the connection with the Frisco as occasion requires. The service from Burdette to the river landing is irregular, but the trains meet all steamboats. Passengers are permitted to ride on the train without charge.

For the movement of logs to the mill the tap line charges the lumber company 2 cents per 100 pounds. It receives an additional 2 cents or 3 cents per 100 pounds from the Frisco as an allowance out of the joint rates for the movement of the lumber from the mill to the Frisco. For the lumber delivered to the steamers at Wolverton Landing the tap line charges 2 cents per 100 pounds. It furnishes the cars for such shipments, whereas on traffic moving over the Frisco the car is supplied by the trunk line.

BROOKINGS & PEACH ORCHARD RAILROAD.

The hardwood mill of the Harris Manufacturing Company, at Brookings, on the bank of the Black River, in the state of Arkansas, and the equipment and narrow-gauge track of the Brookings & Peach Orchard Railroad, extending from that mill to the line of the Iron Mountain, a distance of 3 miles, were purchased in 1907 by the Quellmalz Lumber & Manufacturing Company. The mill and the tap line are substantially one investment. The latter was not incorporated, however, until 1908, when its track was rebuilt by the present owners and changed to standard gauge. The officers of the tap line are officers also of the lumber company; and while they receive no salaries from the tap line they are accorded annual and trip passes for interstate use by the trunk lines. In addition to its capital stock of $6,000, the tap line owes the lumber company nearly $10,000 on account of purchases of steel and equipment. It has one locomotive and four freight cars, two of which are only 5-ton capacity. It has no station buildings, track scales, or other facilities for handling carload or less-than-carload freight. It has put in operation since the hearing a boat and barge, which it uses for hauling ties and stave bolts on the Black River and tributary waters. Its locomotive hauls out one lumber train daily, on an irregular schedule; the tap line carries no passengers.

The logs are floated down the Black River to the mill at Brookings. The lumber is moved by the tap line for a distance of 3 miles to the Iron Mountain. For this service it receives 3 cents per 100 pounds out of the joint rates published by the Iron Mountain, which are 1 cent higher than the rate from the junction point, so that the net contribution by the Iron Mountain out of its revenues is 2 cents per

100 pounds. In addition to the mill of the Quellmalz Company there are three small sawmills, each having a capacity of 10,000 to 15,000 feet daily, which use the facilities of the tap line. Their entire tonnage for the year 1910, however, was but 960 tons, or apparently about 40 carloads. The output of the Quellmalz mill during the same period was approximately 8,000 tons. In addition to the products already referred to, the only traffic handled by the tap line during the year 1910 was 1 carload of corn. Brookings is described as a mill and farm town, with a population of 150, with a company store. While the tap line owns its right of way, the record indicates that practically all the land on both sides of the river is owned by the Quellmalz Company.

CROSSETT RAILWAY.

The mill of the Crossett Lumber Company is at Crossett, Ark., where terminate branch lines of the Rock Island, Iron Mountain, and Arkansas, Louisiana & Gulf Railroads. The lumber company controls, and operates in the interest of its mill, a tap line known as the Crossett Railway connecting with the three trunk lines at Crossett. At the date of the hearing the tap line owned 10 miles of track extending northward, closely paralleling for some distance the rails of the Rock Island; and beyond this track it leased about 5 miles of unincorporated spurs owned by the lumber company. The cost of the tap line, including about 5 miles of so-called terminals in and about the mill and extending to the trunk lines, is stated on the brief at $120,000. The capital stock of the railroad corporation amounts, however, to but $25,000, all of which was issued to the lumber company in 1905, when the tap-line corporation was formed, in exchange for 10 miles of track and equipment. The tap line owns 2 locomotives but no cars; it leases 80 logging cars from the lumber company at an annual rental of $22,500, or an average of more than $280 per car. The original cost of the cars was less than $400 and they are kept in repair by the lumber company. The tap line has no salaried employees excepting its trainmen and trackmen and one car inspector. Its officers receive their entire salary from the lumber company, whose clerks are employed by the tap line for an arbitrary charge of $100 per month, to keep its accounts and perform its clerical services.

The lumber company loads the logs on the cars and hauls them over its private unincorporated spurs to the point of connection with the track that it leases to the tap line; from that point the logs are hauled by the tap line over the leased track and then over the track it owns to the mill, where they are unloaded by the trainmen into the pond. No charge is made by the tap line for this service. The shipments of lumber, for which empty cars are furnished by the

trunk lines, are switched by the tap line from the mill to the Iron Mountain, a distance of one-quarter mile, or one-half mile to the Rock Island. The trunk lines allow out of their earnings from 2 to 4½ cents per 100 pounds, which is intended to cover the movement of the logs into the mill and the lumber out. Under a formal contract with the Rock Island the tap line has agreed to deliver to that company not less than 50 per cent of its outbound lumber tonnage. About 40 per cent is actually delivered to the Iron Mountain and something less than 10 per cent to the Arkansas, Louisiana & Gulf.

The tap line does not carry passengers, but permits persons to ride on its trains without charge; and for the fiscal year 1910 its annual report to the Commission indicates that its entire traffic, amounting to 252,673 tons, was forest products, of which 95 per cent was supplied by the lumber company, and 5 per cent by other persons, who cut their timber on the lands of the lumber company, as the record indicates. The statement on the annual report, however, does not accord with the record, where it is claimed that 19 carloads of merchandise and the same number of carloads of forest products were handled during the year 1910, in which neither the tap line nor the lumber company had any interest. This outside tonnage is said to have increased to 180 cars during the six months ending December 31, 1910. Mention is made on the record of a small mill at Crossett, owned by the lumber company and leased to another lumber company, which purchases its logs from the Crossett Lumber Company and has them hauled in by the tap line. The impression sought to be made by the tap line on the record is that the timber holdings of the Crossett Lumber Company, which had amounted to over 200,000 acres, were nearly all cut, and that therefore "the tonnage of the Crossett Lumber Company will disappear by July, 1911." The fact, however, as disclosed by a careful examination of the testimony, is that the lumber company owns or is contemplating acquiring extensive additional timber holdings south of Crossett, which will be reached by proposed extensions of the line in the opposite direction from that now taken. There remains a large quantity of hardwood which is available for cutting on its lands that have been denuded of yellow pine. It threatens on the one hand that if the Commission holds that the tap line is not a common carrier it will remove and take up its rails and withdraw entirely from the railroad business, because without its interstate business it would be most unprofitable. On the other hand it boasts of large plans for future development; one proposition stated on the record being an extension of a few miles to meet the Wilmar & Saline Railroad, another tap line, with which it would then consolidate, making "54 miles of railway under one management."

Another possibility mentioned is the acquisition of the line by one of the connecting trunk lines.

The reports to the Commission indicate a gross operating revenue for the year 1910 of $71,745.05, and a net operating revenue of $35,593.12. After payment of taxes and paying to the lumber company $5,193.36 for lease of track and $22,500 for lease of equipment, it had a net income for the year of $7,643.51, making a total surplus from its operations to June 30, 1910, of $31,681.46. The officers of the lumber company, through their connection with the tap line, have the benefit of free interstate passes, which they do not hesitate freely to use.

FORDYCE & PRINCETON RAILROAD.

The Fordyce Lumber Company was incorporated in 1890, and erected its mill at Fordyce, Arkansas, about 1 mile from the line of the Cotton Belt System. In the same year and as part of the same investment, the Fordyce & Princeton Railroad Company was organized and laid a track from the Cotton Belt to the plant. When the mill was opened the track was extended northward into the timber for the purpose of hauling logs. From the beginning the tap line has been operated primarily as a facility of the mill. Its main stem runs northward from the mill for a distance of 22½ miles to a point known as Old Junction. It parallels, within a distance of about a mile, the line of the Rock Island, which was subsequently built through Fordyce and crosses the Rock Island near Old Junction. From a point named Cynthiana, where there are two farmhouses, there is a branch 6 miles in length crossing the Rock Island and running to Dobbs Mill, where there is a small hardwood mill, and thence to Trigg, a settlement where the lumber company has a store. This line, from Cynthiana to Trigg, was built by the lumber company and transferred to the incorporated tap line shortly before the hearing for a consideration of $42,000. The lumber company has an unincorporated logging track connecting with the tap line at Old Junction and several miles of unincorporated spurs in the vicinity of Trigg. The equipment of the tap line consists of 1 locomotive, 4 box and 67 logging cars. The lumber company uses on its unincorporated tracks three Shay geared locomotives.

Mention is made on the record of a stave company which has a mill at Fordyce, and a manufacturer of spokes, handles, and other hardwood products that is erecting a mill at the same point. Neither of these industries, however, is on the rails of the tap line, but they obtain a considerable quantity of logs from the Fordyce Lumber Company. There are also a few small shippers of staves along the tap line. But the tap line runs so near to the Rock Island that any

traffic it receives or originates must necessarily be taken at the expense of the trunk lines. It does not participate in joint rates on any commodities other than lumber outbound and coal inbound. The merchandise, amounting to 265 tons, which it handled during the year 1910, paid the local charge of the tap line in addition to the rates of the trunk line. The shipments of staves and stave bolts moved during the same year for others than the lumber company amounted to 4,288 tons, and it is understood that this moved on a local rate to Fordyce. The traffic of the lumber company itself in the same period amounted to 24,079 tons, of which 264 tons was hay and grain and the rest lumber. The tap line runs two log trains daily in each direction, but does not carry passengers for hire.

The logs are loaded on the unincorporated tracks by the employees of the lumber company, and its locomotives deliver the cars at the junction with the incorporated tap line. They are then taken by the tap line, without cost to the lumber company, to the mill. The tap line moves the lumber from the mill to the line of the Rock Island or Cotton Belt, a distance of about a mile. It receives from the Rock Island divisions ranging from 2 to 4½ cents per 100 pounds, and from the Cotton Belt 2½ to 3 cents. There is a contract between the lumber company, the tap line, and the Rock Island providing for these divisions and requiring the delivery of at least 50 per cent of its traffic to that company. The record indicates that the most of the lumber goes to destinations where the division is 4 and 4½ cents.

The tap line claims to perform a switching service on shipments interchanged between the Cotton Belt and the Rock Island at Fordyce, its revenue in the year 1910 on that account being $1,145.

The annual report to the Commission indicates the payment of a dividend aggregating $5,430 during the year 1910. After the payment of this dividerd a deficit was created by the writing off of accrued depreciation on road and equipment.

HOMAN & SOUTHEASTERN RAILWAY.

The main track of the Homan & Southeastern Railway Company is 12 miles long and connects with the Iron Mountain at Homan, Ark. The mill that it serves is about 1,000 feet from the Iron Mountain right of way, and is named on the record as Arthur. The other end of the track is in the timber and bears no name. The tap line also operates several miles of logging spurs. Its equipment consists of 2 locomotives, 2 flat and 15 log cars; and one logging train runs in each direction, on which passengers are carried free. A train is sometimes run when a carload of freight other than products is offered for movement.

The mill was apparently erected in 1904 by the Kelly Lumber Company, which had previously been in business elsewhere. Shortly thereafter the tap line was built, and was incorporated as the Homan & Southern, having at that time 6 miles of track, that has since been taken up and entirely relocated. In 1906 the Kelly Lumber Company failed, and the Homan Lumber Company took over the property. At the same time the Homan & Southeastern was organized and succeeded the Homan & Southern. In 1909 the mill at Homan and the entire capital stock of the Homan & Southeastern, amounting to $27,000, was purchased by J. A. Brown & Company, the Homan Lumber Company at that time having cut off most of its timber. The vendees were not prepared to begin logging their own timber, and therefore leased the mill to the Homan Lumber Company, which continued to operate it until December, 1910, when the mill was destroyed by fire. At the time of the hearing it was being rebuilt by Brown. The Homan Lumber Company was itself building a new mill on the Red River about 3½ miles away, and was constructing about a mile of railroad to connect with the Iron Mountain.

There are said to be a number of farms along the tap line and the country is developing. The traffic of the tap line during the year 1910, however, was almost entirely lumber, there being but 306 tons of cottonseed, farm products, and merchandise, the lumber weighing 10,344 tons, with some three or four times that weight of logs moving into the mill. For the fiscal year 1909 the lumber movement exceeded 29,000 tons.

The Homan & Southeastern is a party to joint rates published by the Iron Mountain that are 1 cent higher than the rates from mills on the trunk line itself. The Iron Mountain allows the tap line from 4 to 5 cents per 100 pounds, which includes the arbitrary of 1 cent. On such other traffic as it has the tap line apparently makes a local charge in addition to the Iron Mountain's rate. While the mill was in operation the logs were hauled to it by the tap line without charge against the lumber company; and the lumber was switched by the tap line for a distance of about 1,000 feet from the mill to the Iron Mountain.

The Homan & Southeastern does not file annual reports with the commission.

LITTLE ROCK, SHERIDAN & SALINE RIVER RAILWAY.

The Little Rock, Sheridan & Saline River Railway Company was chartered in February, 1892, and is owned by the William Farrell Lumber Company, as is admitted of record. The track of the tap line is narrow gauge and runs from mill at Farrell, Ark., to a point in the timber known as Craig's Mill, a distance of 17 miles. The

equipment consists of 3 locomotives and 36 cars. There are unincorporated logging spurs owned by the lumber company which it operates with engines furnished by the tap line at a charge of $20 per day, including fuel and the crew. The tap line hauls the logs to the mill and charges the lumber company $4 per car. This, however, is later refunded when the lumber is shipped out. The sawmill is about 200 yards from the main track of the Iron Mountain; the planer is somewhat less distant. But apparently all of the manufactured lumber, whether planed or undressed, is switched by the Iron Mountain from the mill. The tap line receives an allowance of 4 or 5 cents per 100 pounds out of the Iron Mountain's rates.

The timber holdings of the lumber company are in the vicinity of Craig's Mill, where the logging spurs are laid, and aggregate about 54,000 acres. The traffic handled for others than the lumber company amounted, during the fiscal year 1910, to only 110 tons, and consisted of feed and general merchandise, while the lumber shipped by the Farrell Lumber Company exceeded 41,000 tons. The log movement averages 10,000 cars per annum.

The capital stock issued and outstanding amounts to $125,000; and in addition the Farrell Lumber Company holds bonds in the tap line to the amount of $75,000. The surplus on June 30, 1910, was $14,290.01, accumulated since 1907.

L'ANGUILLE RIVER RAILWAY.

The L'Anguille River Railway consists of 1.7 miles of track, laid in what is described on the brief as a general circular direction from the right of way of the Iron Mountain in the town of Marianna, Ark., to the bank of the L'Anguille River, where the mills of the Indiana-Arkansas Lumber & Manufacturing Company and the Miller Lumber Company are in operation. The stockholders of those companies own all of the stock, amounting to $10,000, in the tap line. It is stated of record that one "station" on the road is the loading point of the Indiana-Arkansas Company, one is the loading point of the Miller Lumber Company, and the other "station" is the loading point of the McDonald Company. The tap line has two locomotives, and it uses cars furnished by the Iron Mountain. No passengers are carried, but it has some miscellaneous freight that is brought in by a packet line and which it switches over to the Iron Mountain. There is also a small brick plant that furnishes some traffic. Altogether for the year 1910 it moved 223 carloads, or 5,671 tons, of miscellaneous freight, on which it received earnings of $2,458.14, made up for the most part of local charges paid by the shippers. For the same period the traffic of the Indiana-Arkansas Company aggregated 631 on which its revenues were $5,893.74, while the tonnage of the

Miller Lumber Company amounted to 552 cars, on which the revenue was $5,706.04.

The logs that are cut by the mills are floated down the river or brought in by barges and steamers. For the movement of the lumber from the mills the Iron Mountain makes an allowance of 2 cents per 100 pounds out of its rate from Marianna. The only joint rates are on forest products, and on other commodities, such as brick and coal, the tap line is content to receive a switching charge of $3 per car, or $5 per car on cotton, which apparently is not absorbed by the Iron Mountain but is paid by the shipper.

The tap line was incorporated in 1902. It makes annual reports to the Commission, from which it appears that the salaries to its officers exceed $6,000 per annum.

OUACHITA VALLEY RAILWAY.

The Ouachita Valley Railway connects with the Cotton Belt at Millville, Ark., where the mill of the Freeman-Smith Lumber Company is situate, and runs in a southeasterly direction for a distance of 28 miles to Stark, where it joins the Rock Island Railroad. A good deal is said on the record of proposed extension of the line to reach certain towns and farming country. There are said to be one or two small settlements and a few farms on the line, but the freight in which the lumber company was not directly interested amounted to but 450 tons for the eighteen months ending December 31, 1910. There are a number of miles of unincorporated logging track connecting with the tap line. The tap line itself is laid with a light 30-pound rail, but it owns its right of way. It has 5 locomotives, 2 cabooses, a motor car, and 70 logging cars. One mixed lumber and logging train runs daily in each direction between Millville and Stark; its passenger revenue for 1910 amounted to $764.54.

The tap line was originally built by the lumber company nearly 20 years ago; and upon its incorporation in 1904 the track and equipment was transferred to the railroad company in exchange for its capital stock, amounting to $100,000, which was thereupon distributed among the shareholders of the lumber company as a dividend.

The logs are hauled by the tap line from the loading point on the unincorporated tracks to the mill and are unloaded at the mill by the trainmen. A charge of $4 per car is made against the lumber company, which is supposed to include the expense incurred by the tap line in laying and changing the logging spurs. The mill is at the junction with the Cotton Belt which places the empties and takes away the loaded cars moving over that route. The greater proportion of the tonnage, however, is delivered to the Rock Island, requiring a haul by the tap line of the empty and loaded cars of 28 miles from

the mill to Stark. When the Rock Island built into the country, in 1906, it entered into its standard form of contract with the Ouachita Valley Railway, requiring the routing of 50 per cent of its traffic over that trunk line and stipulating for the payment of a division of from 2 to 5 cents per 100 pounds. The Cotton Belt allows from 1 to 2½ cents per 100 pounds. The excess of the Rock Island divisions therefore seems to be sufficient to induce a 28-mile movement by the tap line in preference to direct delivery to the Cotton Belt. There are also joint commodity rates with the Rock Island on fertilizer, hay, feed, and coal, but on most of the miscellaneous traffic, amounting only to 259 tons in 1910, local rates are apparently charged.

SOUTHERN PINE SYSTEM.

The so-called Southern Pine System seems to be an informal association of four tap lines, two of which, known as the Griffin, Magnolia & Western Railway Company and the Saline Bayou Railway Company, are Arkansas corporations, and the others, namely, Enterprise Railway Company and Natchez, Ball & Shreveport Railway Company, are located in the state of Louisiana. The precise relationship between the four companies as respects their ownership or control is not definitely disclosed of record; but the fact is not important. The four properties are similar in many respects, and their methods of doing business do not differ materially.

The Griffin, Magnolia & Western is controlled by the stockholders of the Louis Werner Saw Mill Company, and its main track, 18 miles in length, connects with the Iron Mountain at Griffin, Ark. The other end of the line is referred to on the record as Graham, but is named on the annual report to the Commission as Junction. There are about 7 miles of logging branches. The tap line has capital stock to the amount of $50,000 and no bonds. Its equipment consists of 3 locomotives, 1 caboose, 2 coal cars, and 25 flat cars, used for hauling logs. The lumber company has neither locomotives nor cars of its own; nor are there any unincorporated logging tracks.

Both the sawmill and the planing mill of the Werner Company are reached by the tracks of the Iron Mountain at Griffin; and the usual practice is for the Iron Mountain to spot the empty cars and take the loaded cars directly from the mill without assistance by the tap line. The tap line hauls the logs to the mill, making a charge against the lumber company of $1.50 per 1,000 feet for the service on the logging spurs up to Junction or Graham; its compensation for the movement of the logs from that point to the mill is the division of the through rate allowed it by the Iron Mountain, which varies from 2 to 5 cents per 100 pounds. It is said that the logs of the Werner Sawmill Company constitute only 65 per cent of

the total tonnage of the road. There seem to be one or two other small mills on the line and a number of shippers of staves. The latter pay the local charge of the tap line in addition to the regular charges of the Iron Mountain. A considerable quantity of logs, chiefly hardwood, moves over the tap line to Griffin, and from there is hauled by the Iron Mountain to sawmills along its lines, one of the mills apparently being 300 miles distant. These logs are said to be cut from timberland in which the lumber company is not interested and which is reached by the logging spurs of the tap line; the tap line charges the regular Arkansas log rate for the entire distance from the loading point on the logging spurs to the junction with the Iron Mountain. For the fiscal year 1910 more than 99 per cent of the traffic of the tap line was forest products, which amounted in the aggregate to 59,740 tons. There were 200 tons of farm products and 318 tons of merchandise and miscellaneous freight. No charge is made for carrying passengers.

The first 5 miles of the Griffin, Magnolia & Western was originally built as an unincorporated logging road by a lumber company which subsequently failed. The tap line was incorporated in 1905. Its annual report to the Commission for the year 1910 shows freight revenues of $29,547.56 and a net loss from operation, on June 30, 1910, of $6,097.45. Mention is made of proposed extensions to El Dorado and Champion, which, if constructed, would involve the crossing and paralleling of several other tap lines now built or which have plans of building in that territory.

The Saline Bayou Railway Company was chartered in June, 1905, under the Arkansas law, and its capital stock, amounting to $30,000, is held by the stockholders of the Oak Leaf Mill Company. The sawmill is reached by the tracks of the Iron Mountain, and the tap line performs no service on the manufactured lumber. The rails of the tap line extend from the mill at Oak Leaf, Ark., for a distance of 14 miles into the timber, with several miles of incorporated logging spurs. It has two locomotives and a number of logging cars, but no box cars or other equipment for miscellaneous traffic. About 95 per cent of the tonnage consists of the logs of the lumber company. An insignificant amount of general merchandise and farm products is moved for settlers and there is a small movement of hardwood logs. It has no passenger service.

The logs are loaded on the cars by the employees of the tap line; the method of hauling them to the mill is similar to that employed on the Griffin, Magnolia & Western; and the same charge of $1.50 per 1,000 feet is made by the tap line for the service on the logging spurs. The divisions received from the Iron Mountain range from 1½ to 5 cents, the average being 3 cents per 100 pounds, the junction-point rate being in effect from all points on the tap line.

The reports filed with the Commission indicate that the tap line is operated at a slight loss, and the statement made on the brief is that the deficit is met by the Oak Leaf Lumber Company.

The Enterprise Railway Company was incorporated in 1903, and operates 12 miles of standard-gauge track connecting with the Iron Mountain at Simms and penetrating the timber of the Enterprise Lumber Company, whose mill is located on the tracks of the Iron Mountain in Alexandria, La. The tap line has trackage rights from the junction of its own rails at Simms over the Iron Mountain to the mill at Alexandria, this right being limited to the operation of logging trains at a charge of 50 cents per train-mile. The tap line has 4 locomotives and 71 cars. The lumber company has no equipment. The tap line builds and maintains spurs into the timber wherever required for logging operations. The tap line hauls the logs all the way from the loading point in the woods to the mill at Alexandria; and a charge of $1.50 per 1,000 feet is made against the lumber company for the expense of maintaining the logging spurs, hauling the logs over them, and the unloading of the logs at the mill. The trunk line switches the manufactured product from the mill and pays the tap line a division of from 2 to 5 cents per 100 pounds out of the joint rates which are published as applying from Clear Creek, the terminus of the tap line in the woods.

The tap line has an inconsiderable traffic in merchandise and miscellaneous freight, and the revenue from the staves and hardwood which it moves for others than the lumber company amounts to but 3 or 4 per cent of its total revenue. The only through rates in which it participates are those on yellow-pine lumber, all other freight paying a local charge to Simms in addition to the rates of the Iron Mountain.

The operations of the tap line appear not to have been profitable, and the lumber company has supplied more than $100,000 to meet operating deficits.

The J. F. Ball & Brother Lumber Company has two mills, located, respectively, at Pollock and at Ball, in the state of Louisiana, being points on the line of the Iron Mountain, a short distance north of Alexandria. Simms, the junction point of the Enterprise Railroad with the Iron Mountain, is between Pollock and Ball. Each of the mills of the lumber company is served by the tracks of a tap line, which is known as the Natchez, Ball & Shreveport Railway Company, and is controlled by the lumber company. In other words, the tap line is built in two sections, one connecting with the Iron Mountain at Pollock and the other connecting with the Iron Mountain at Ball. The aggregate of the tracks is 34 miles, and at Dry Prong the tap line connects with the Louisiana & Arkansas Rail-

road, over which the Rock Island lines have trackage rights. The equipment consists of 4 locomotives, about 70 flat cars, and 2 cabooses, 27 of the flat cars being leased from the Iron Mountain for a per diem charge.

The record indicates that the tap line was built through an unbroken forest. It does not carry passengers; and its tonnage consists very largely of forest products, of which more than 95 per cent is supplied by the mills of the Ball company. The record is silent as to the manner in which the lumber is handled from the mills, which are located within a few hundred feet of the Iron Mountain, but our own investigations indicate that the cars are switched by the Iron Mountain. As the tap line seems not to enjoy allowances or divisions from the Rock Island or Louisiana & Arkansas, we infer that little if any tonnage is delivered to those companies. The divisions paid by the Iron Mountain out of its earnings range from 1½ to 5 cents per 100 pounds. As on the other three lines composing the Southern Pine System, the logs are hauled by the tap line from the point where they are loaded on the logging spurs to the mill and a charge of $1.50 per 1,000 feet is made for the service on the logging spurs.

The Natchez, Ball & Shreveport has not filed annual or other reports with the Commission, nor has it published any tariffs that are on file with the Commission.

BLACK BAYOU RAILROAD.

The Black Bayou Railroad Company was organized in 1904 and was operated in the interest of the small sawmill of the Black Bayou Lumber Company. The record indicates that the lumber company got into financial difficulties as a result of the panic of 1907 and was compelled to cease operations. The Southern Lumber Company subsequently purchased the assets and reorganized the tap line corporation, which had forfeited its charter. Capital stock was issued to the amount of $50,000, in addition to which the tap line owes the Southern Lumber Company about $1,000. The tap line was thereupon rebuilt in a more substantial form and relocated to run in another direction, the 35-pound steel being replaced with 60-pound steel, which apparently is leased from the Kansas City Southern Railway Company.

The equipment consists of 1 locomotive, 1 construction car, and 26 logging cars. There are no station buildings or other facilities. Its employees consist of one train crew, one section gang, and a construction gang. The record states that no salaries are paid to its officers, who are also officers of the lumber company and who enjoy the privilege of free passes over the Kansas City Southern. The first annual report made to the Commission, however, for the fiscal year 1911, shows that the officers have since been placed on salary.

The Black Bayou Railroad connects with the Kansas City Southern at Myrtistown, La., and extends into the timber for a distance of 7 miles, crossing the state line into Texas. In addition to this track there are logging spurs aggregating over 8 miles in length constructed by the tap line. The mill of the lumber company is apparently at the junction between the tap line and the Kansas City Southern, and the Kansas City Southern places the empty cars and switches the loaded cars from the mill. There are joint rates on lumber out of which the Kansas City Southern allows the tap line from 1 to 4 cents per 100 pounds, which is, of course, intended to cover the movement of the logs into the mill. In addition to this compensation the tap line charges the lumber company, for the construction and operation of the logging spurs, an arbitrary amount, which is apparently determined periodically and is sufficient to make the road show net earnings. For the year 1911 this charge seems to have been $5 per log car. The record describes the traffic of the tap line as consisting wholly of logs and camp supplies transported for the Southern Lumber Company. The annual report for the fiscal year 1911 seems to verify this fact. There is no regularity of train service, but about four trainloads of logs are handled each day. It does not carry passengers.

The annual report to the Commission is somewhat informal in character and indicates that the disbursements of the tap line are made through the lumber company.

BODCAW VALLEY RAILWAY.

The Bodcaw Valley Railway Company was incorporated in 1904 and has capital stock outstanding to the amount of $67,000. Its tracks extend from a connection with the Cotton Belt at Alden Bridge, Louisiana, in an easterly direction for about 24 miles. It is owned by the Frost-Johnson Lumber Company, which acquired the tap line when it purchased the mill and timber of the Whited & Wheless Lumber Company; no separate or specific amount was paid for the railroad and equipment.

The Bodcaw Valley is remarkable in the fact that it receives from the Cotton Belt an allowance of from 1 to 2½ cents per 100 pounds out of the rate, although it neither hauls the logs to the mill nor performs any service on the finished product from the mill. The mill of the lumber company is located on the tracks of the Cotton Belt, which places the empty cars at the loading platform and moves the carloads of lumber away. The tap line conducts no train operations, its tracks from the timber to the mill being used by the Smyth Logging Company, which is also subsidiary to the Frost-Johnson Lumber Company, for the movement of logs to the mill. For this

purpose the logging company leases the equipment of the tap line and pays a yearly rental for the tracks. Such is the testimony appearing of record, although the annual report indicates that the tap line has several trainmen. The entire traffic as reported to the Commission consists of logs, amounting for the year 1910 to 78,592 tons.

This tap line yields a substantial profit to its owners, having paid during the year 1910 a dividend of 20 per cent on the stock, its net operating revenue for that year being $7,140. Apparently the bills for the allowances are sent to the Cotton Belt by the lumber company, and the cash accruing under the settlements passes to the lumber company.

MILL CREEK & LITTLE RIVER RAILWAY.

The Mill Creek & Little River Railway & Navigation Company is controlled by the stockholders of the Little River Lumber Company, which furnishes its entire traffic, consisting, for the year covered by this record, of 52,425 tons of logs and lumber and 197 tons of merchandise. It is admitted on the brief that the two companies are one and the same investment, and that there is no outside traffic. The country traversed is hilly, with very few settlers, for whom the tap line does not, in fact, carry any products or supplies. The mill is at Manistee, La., on the tap line about 3 miles from the junction with the Iron Mountain. This is purely a mill town, of about 300 inhabitants and a company store. The construction of the tap line was begun in August, 1905, by the lumber company, and about 6 miles were built the first year. In November, 1905, the tap-line corporation was formed, but it did not take title to the railroad property until 1908. There are 10 miles of incorporated track, lightly constructed with 35-pound rails, of which 8 miles is on land owned by the lumber company, the tap line itself owning no right of way. The lumber company also has several miles of unincorporated logging spurs, the rails in which are owned by the tap line. The equipment of the tap line consists of 2 locomotives and 12 logging cars.

For the movement of the logs to the mill the tap line makes a charge of $4 per car against the lumber company; and this includes the operation of the unincorporated spurs. It also includes the unloading of the logs into the mill pond by employees of the tap line. The tap line switches the empty cars furnished by the Iron Mountain from the junction point known as Bryant's spur to the mill, a distance of 3 miles, and switches the loaded cars the same distance back to the Iron Mountain. For this service a division of 2 cents per 100 pounds is allowed out of the rates, which are the same from the mill as from originating points on the Iron Mountain proper.

It is interesting to observe that for several years there was a mill in operation at Manistee which brought in its logs by ox carts and reached the Iron Mountain with its lumber over a wooden tram operated by mule power. The mill was compelled to suspend operations with the cutting away of the timber standing within a distance that could be logged profitably by wagon. The present owners purchased the property and constructed the tap line.

The intention of the lumber company seems to have been to acquire barges or other floating equipment and thus move forest products on the river. This intention is expressed in the corporate title of the tap line, but has not been made effective.

RED RIVER & ROCKY MOUNT RAILWAY.

The mill of the Antrim Lumber Company is adjacent to the right of way of the St. Louis Southwestern Railway, known as the Cotton Belt, at Antrim, La., and has been in operation for about 16 years. During practically all of that period it has brought in its logs over a tram road which was incorporated in May, 1904, as the Red River & Rocky Mount Railway Company, but which had been receiving divisions out of the through rate prior to that date. The tap line consists of 12 miles of standard gauge track extending westward from the mill to the timber and about three-fourths of a mile of track crossing the Cotton Belt and running to the eastward; all of the track is laid with light 35-pound steel, and title to the right of way is in the name of the tap line. The lumber company has a short unincorporated logging spur which is operated for it by the tap line. The equipment of the tap line consists of 3 locomotives and 30 loggings cars. There are 3 train crews. The entire tonnage of the road consists of logs handled for the lumber company from the timber to the mill, at a charge of 40 cents per ton, which apparently is not refunded, although the rates published by the Cotton Belt and participated in by the tap line are apparently on a milling-in-transit basis. In addition to this charge on the logs the tap line receives from the Cotton Belt an allowance out of the published rate of from 1 cent to 2½ cents per 100 pounds. The lumber, however, is loaded by the lumber company into cars furnished and placed at the mill by the Cotton Belt, which also takes the loaded cars away. In other words, the tap line performs no service in connection with the movement of the finished lumber.

The capital stock of the tap line amounts to $64,000, which was issued to the stockholders of the lumber company as a dividend. We find of record an admission that when the timber is cut away the rails may be taken up and the tap line abandoned. On the other hand it is contended that the development of the Caddo oil fields may furnish new traffic for the tap line.

WOODWORTH & LOUISIANA CENTRAL RAILWAY.

The Woodworth & Louisiana Central Railway serves the mill of the Rapides Lumber Company at Woodworth, Louisiana, a station on the Iron Mountain railroad which has a spur track to the mill. The tap line and lumber company are identical in interest with the same principal officers. The tap line has a standard-gauge track extending from the mill eastward for six miles to La Moria, Louisiana, connecting with the Southern Pacific, Texas & Pacific, and Rock Island lines. Its main track, however, is narrow gauge and runs from the mill westward for 18 miles to a point from which unincorporated tracks extend into the timber. The right of way for the narrow-gauge track is leased from the lumber company; but the steel in the unincorporated logging spurs, on the other hand, is owned by the tap line and leased to the lumber company, as are four narrow-gauge locomotives which the lumber company utilizes in the operation of the logging spurs. The equipment of the tap line consists of 1 standard-gauge locomotive, 5 narrow-gauge locomotives, and 2 standard and 9 narrow-gauge cars. The logs are hauled from the end of the incorporated track to the mill by the tap line without charge against the lumber company and are dumped into the mill pond by the trainmen. The standard-gauge locomotive of the tap line switches the carloads of lumber from the planing mill to the point from which they are taken by the Iron Mountain, a distance, as the record indicates, of only 25 feet, or less than a car length. About 95 per cent of the lumber moves through La Moria, being switched to that point, a distance of six miles, by the tap line. The explanation doubtless lies in the fact that the allowances from the Iron Mountain out of the through rates run from 1½ to 5½ cents, while the trunk lines connecting at La Moria allow from 2 to 5½ cents. There are no joint rates except on lumber. The record indicates that 40,707 tons of freight was handled for the lumber company during the fiscal year ending June 30, 1910, and that there was 2,100 tons of outside traffic, consisting of merchandise, farm products, and miscellaneous material. It does not appear what proportion of this tonnage was intended for employees of the lumber company. There is no passenger service.

The Woodworth & Louisiana Central was incorporated in 1900, with a capital stock of $25,000. It has no bonds, but is indebted to the lumber company in the sum of $88,000 and to a bank in the amount of $10,000. Its operations for the year ending June 30, 1910, resulted in a deficit; but there was a surplus on that date, resulting from previous years, amounting to nearly $10,000. It files annual reports with the Commission.

FREEO VALLEY RAILROAD.

The record indicates that the sawmill and planing mill of the Eagle Lumber Company at Eagle Mills, La., have been in operation more than 25 years and are served by short spur tracks connecting with the rails of the Cotton Belt. The logs are brought into the mill over a track about 22 miles in length, most of which was constructed a few years after the building of the mills, and which was incorporated in 1904 as the Freeo Valley Railroad Company. When this corporation was formed the lumber company declared a dividend that was utilized by its stockholders in securing shares in the tap line. The two corporations are identical in interest, and with one exception their officers are the same. Beyond the incorporated track already referred to, which terminates at a point known as Princeton junction, there is about 17 miles of unincorporated tracks owned by the lumber company itself. The first 2½ miles of this track, however, seems to be treated as a part of the incorporated line to the extent that the tap line runs logging trains for that distance to a town known as Princeton, which had a population of about 400, and seems once to have been a county seat. The first 3 miles of the line out of Eagle Mills extends through pine land, the next 7 miles through a farming country that has been cut over by the lumber company, and the remainder through timber which when cut over will be available only for orchard purposes. The tap line has no equipment of its own, but uses 2 locomotives, 61 logging cars, and 1 other car that belong to the lumber company, no charge being made therefor.

The tap line moves the logs over the unincorporated track from Princeton to Princeton junction, and thence over its own rails to the mill, where they are unloaded by the trainmen. For the service over the unincorporated track from Princeton to Princeton Junction, and the unloading, the lumber company pays the tap line $2 per car. The trunk line spots the empties at the mill and takes away the loaded cars of lumber. It pays the tap line a division of from 1 to 2½ cents per 100 pounds out of the joint rates on yellow-pine lumber, which are the same from Princeton junction as from Eagle Mills.

The tap line does not carry passengers and it has very little traffic other than forest products. During the year 1910 it is estimated that the logs moved for the lumber company aggregated in weight about 108,000 tons. Mention is made on the record of 15 carloads of fertilizer hauled for various farmers during that year, and it is said that the merchandise and miscellaneous freight, including this fertilizer, amounted to 5,524 tons. Its report to the Commission, however, shows only 718 tons of agricultural products,

of which 589 tons were inbound hay and grain, 1,220 tons of coal and other mine products, and 115 tons of merchandise and manufactured articles. Its report for the year 1911 shows a total traffic exclusive of forest products of 2,053 tons.

There is one yellow-pine mill on the line and a small hardwood mill which is engaged exclusively in cutting ties, but their tonnage added to the traffic of the farmers and settlers on the line was so small, as compared with the tonnage of the lumber company, as to make during the year covered by the record less than 10 per cent of the total movement of the tap line. Moreover, it will be noted that the hardwood mill pays a flat rate of $15 per car to the tap line in addition to the rate of the Cotton Belt from the junction point. There are no joint through rates on class and commodity freight.

The annual reports to the Commission indicate substantial net operating revenues and a surplus on June 30, 1910, of nearly $50,000, a large portion of which had been actually expended in extensions and betterments. Previous to February, 1911, no charge was made for less-than-carload movements of merchandise.

NATCHEZ, URANIA & RUSTON RAILWAY.

The Natchez, Urania & Ruston Railway is controlled by the stockholders of the Urania Lumber Company through ownership of the entire capital stock. The two companies are one investment and the officers are identical.

It extends from a connection with the Iron Mountain at Urania, La., into the timber about 14 miles. The road was originally constructed in 1899 by the Urania Lumber Company as a private logging road. It was incorporated March 29, 1902, under the laws of Louisiana, with a capital stock of $100,000, of which $50,000 has been issued for the purchase of the road from the lumber company. This purchase only covered the steel, ties, and equipment, the lumber company retaining the title to the right of way. There are no bonds.

The equipment consists of 2 locomotives and 24 cars. The lumber company owns no equipment or motive power.

The mill of the lumber company is located at Urania, about 300 yards from the connection with the Iron Mountain. There are no other mills in operation on the line. The lumber company owns about 50 per cent of the timber tributary to the tap line. There is no other timber owned in sufficient quantities to justify a mill operation.

The tap line constructs and maintains short logging spurs into the timber, and loads the logs upon the cars and hauls them to the mill, where they are unloaded into the log pond by the train crew. For the entire service a charge is made against the lumber company of $1.50 per 1,000 feet, which, it is stated, only covers the keeping up of

the logging spurs, the loading of the logs, and their delivery at the main incorporated track of the tap line.

The Iron Mountain handles the empty and loaded cars between the mill and the junction with its main line, using the tracks of the tap line. The tap line receives divisions from the Iron Mountain of from 2 cents to 4 cents per 100 pounds out of the through rates on lumber. The divisions have been received since the original construction of the road and were not changed after the incorporation.

The tap line has no passenger, mail, or express service, but a few passengers are carried free of charge. It handles no logs for others than the controlling lumber company. The only outside traffic consists of stave bolts and ties. A small amount of farm products and general merchandise is handled free of charge, as the record indicates. No revenue is derived from operation other than that accruing from the movement of logs and lumber for the controlling interests except a small revenue for the movement of staves and ties for the public, for which a charge of $15 per car is made.

The tap line does not file annual reports with the Commission. It is admitted that the net earnings in 1909 were in excess of $10,000, and that the net revenue for the fiscal year ending June 30, 1910, was about 15 per cent on an investment of $70,000.

BERNICE & NORTHWESTERN RAILWAY.

The Bernice & Northwestern Railway Company is controlled by the interests that own also the Bernice Lumber Company and the Dubach Lumber Company, and the three companies have the same principal officers. Each of the lumber companies has a mill on the tap line.

The Bernice & Northwestern has two separate tracks. One was constructed by the Bernice Lumber Company in 1902, for bringing the logs to its mill on the Rock Island in Bernice, and extends for a distance of 15 miles to a point known as Summerfield; beyond Summerfield there are 9 miles of unincorporated logging track of the Bernice Lumber Company. The other section of the tap line connects with the Rock Island at Dubach, and runs for 11 miles to Cunningham, where a connection is made with the unincorporated track 9 miles in length used by the Dubach Lumber Company, whose mill is also on the Rock Island, at Dubach. The tap line has 3 locomotives, 4 flat cars, and 64 logging cars. It was incorporated in 1908, for the purpose, as is admitted, of getting divisions.

On each of the sections of the tap line the logs are loaded by the lumber company and hauled over the logging tracks to the junction with the incorporated line. They are then taken by the tap line the mill for a charge of $5 per car, which is subsequently re- d by the tap line when the lumber is reshipped.

At both mills the Rock Island spots the empties and takes away the loaded cars, so that the tap line performs no service with respect to the manufactured lumber. It receives, however, an allowance from the Rock Island of from 1 to 4 cents per 100 pounds on lumber. There are no regular trains on either division; and the tap line does not carry passengers. Its total freight traffic for the year 1910 was 86,611 tons, of which 72,388 tons was lumber for the controlling interests.

The Bernice & Northwestern files annual reports with the Commission, and claims otherwise to comply with the act.

DORCHEAT VALLEY RAILROAD.

The Dorcheat Valley Railroad was constructed by the Porter-Wadley Lumber Company as a private logging road in 1905, and was incorporated in the following year with a capital stock of $75,000, which was issued to the stockholders of the lumber company. The two companies have the same officers. The tap line extends from a connection with the Louisiana & Arkansas, at Cotton Valley, La., to Gleason, a distance of about 6 miles, and has 20 miles of logging spurs through the timber which are moved from time to time to meet the logging requirements. These tracks are constructed and moved without expense to the lumber company. The equipment consists of 5 locomotives and 60 logging cars.

The mill of the lumber company is on the tap line about one-quarter of a mile from the track of the Louisiana & Arkansas. The logs are hauled in by the tap line and the lumber is switched by it to the trunk line. For the service on the logging spurs the lumber company pays $1.25 per 1,000 feet, logging scale. Out of the joint rates on lumber the tap line receives from the trunk line a division of 3 or 4 cents per 100 pounds, being one-half the proportion of the through rates that the Louisiana & Arkansas itself receives.

There are no other sawmills on the line, but there is a small stave mill and a handle factory. The outside traffic for the year covered by the record included but 746 tons of feed, fertilizer, and general merchandise; there were 5,100 tons of staves; and the lumber traffic aggregated 29,000 tons. No revenue is shown for carrying the persons who are permitted to ride on the logging trains.

The annual report to the Commission for the year 1910 shows an operating revenue of $53,375.42. The operating expenses for the same year were $48,680.89, which included substantial sums expended in moving the logging spurs.

MANGHAM & NORTHEASTERN RAILWAY.

The track of the Mangham & Northeastern Railway Company was originally constructed as a private logging road. It was incorporated

in 1905 with a capital stock of $50,000, of which $30,000 has been issued, and is in the hands of the stockholders of the Stewart-Greer Lumber Company. The tap line owes $12,000 to the lumber company, and the two companies have the same officers.

The tap line extends from a connection with the Iron Mountain at Mangham, La., in a northeasterly direction 6 miles to Big Creek. It has 2 locomotives, 1 box car, and 23 logging cars. The tap line lays, maintains, and operates logging spurs for the lumber company, and makes a charge on that account of 1½ cents per 100 pounds for the logs hauled to the mill, which is about 1 mile from the Iron Mountain. The tap line switches the lumber from the mill to the trunk line, and receives from the latter an allowance of from 2 to 3½ cents per 100 pounds out of the junction-point rate. All but 1 per cent of the traffic for the year 1910 was supplied by the lumber company. The record shows that the tap line is wholly dependent upon the mill, and during the year 1908, when the mill was shut down, the tap line discontinued all train service.

PEACH RIVER LINES.

The three tap lines of the Miller-Vidor Lumber Company, the corporate names of which are Galveston, Beaumont & Northeastern Railway Company, Peach River & Gulf Railway Company, and Riverside & Gulf Railway Company, respectively, comprise a " system " known as the Peach River lines. The first named of these companies was incorporated March 2, 1906, and has capital stock to the amount of $100,000, of which $93,000 is held in trust as collateral security for bonds issued by the lumber company on certain of its timber lands. The Peach River & Gulf was incorporated in March, 1904, and has capital stock to the amount of $100,000. The Riverside & Gulf was incorporated in April, 1907, and has a capital stock of $50,000. All three companies are controlled by the Miller-Vidor Lumber Company, whose timber lands and sawmills they serve. It is important to observe that neither of them is recognized by the authorities of the state of Texas as a common carrier by railroad, and they therefore do not participate as such in joint rates on intrastate traffic.

The testimony is that each of the lines published tariffs, but although copies of local schedules bearing I. C. C. numbers are on the record, the records of the Commission do not disclose that those tariffs have been filed with the Commission in the manner required by section 6. Annual reports, however, have been filed, and it is said that the accounts are kept in accordance with the rules of the Commission. The disbursements of each of these tap lines, however, are made by the lumber company, which handles all the cash, the tap lines having no individual bank accounts. In other words, their financial matters are simply bookkeeping transactions.

The Galveston, Beaumont & Northeastern has 9 miles of main track running southward from a point in the timber known as De Sanque to Vidor, Tex., where it connects with the Texarkana & Fort Smith Railway, over which it has trackage rights for a distance of 8 miles through Beaumont to Chaison. The trackage contract entered into in 1908 is in evidence and limits the use of the track by the tap line to the "hauling of company material in carload lots, with its own cars and engines"; this is apparently intended to mean the logs of the lumber company. A wheelage charge of $27.50 per train of 15 cars, equivalent to $1.83 per car, is made by the Texarkana & Fort Smith. From Chaison a joint track about 1½ miles in length extends to the plant of the Beaumont Sawmill Company, one of the Miller-Vidor corporations, on the bank of the Neches River. For the use of this track the tap line pays the Texarkana & Fort Smith about $105 per month. The equipment of this tap line consists of 2 locomotives, 40 flat cars, and 1 caboose. It has two train crews and one section gang. The logging spurs are apparently constructed, maintained, and operated by the tap line.

The record indicates that the entire traffic of the Galveston, Beaumont & Northeastern consists of logs and lumber handled for the controlling interests, and this is verified by its annual reports to the Commission, which show neither passenger nor express revenue, nor any tonnage other than forest products. The logs are hauled by the tap line from the timber over the tracks heretofore described to the mill, where they are unloaded by its trainmen into the river. For this movement of the logs the tap line on its books makes a charge of $3 per car against the lumber company, and no part of this charge is refunded. The tap line also switches the cars for lumber shipments between the mill and the track used for interchange with the Texarkana & Fort Smith, a distance of 3½ miles; and for this service it receives out of the published rate to interstate points an allowance of 1½ to 4 cents per 100 pounds. On intrastate traffic the allowance is uniformly $1.50 per loaded car.

The Peach River & Gulf connects with the Gulf, Colorado & Santa Fe at Timber, Tex., and extends southeasterly for a distance of 10 miles to Midline, where it crosses the Houston East & West Texas Railroad, and terminates at Bartle, 1 mile beyond. It also has one short branch connecting with its main line at a point 5½ miles from Timber, known as Lincoln. The burning of a bridge on that section some time prior to the hearing resulted in the suspension of train service between Lincoln and the Houston East & West Texas, and it was said on the hearing that the bridge would not be rebuilt until the determination in this case of the legality of its allowances. The tracks were laid by the Santa Fe at the expense of the tap line and are standard gauge, with 35 and 40 pound steel. Its equipment con-

sists of 3 locomotives, 30 freight cars, and 1 coach; the cars are not equipped with safety appliances. It has 2 train crews and 1 section gang, and operates, as the record indicates, a daily train on regular schedule. While the passenger coach seems to be attached to this train the road has no passenger earnings, which indicates that no charge is made for such persons as may be carried. Its entire revenues accrue on the logs and lumber of the Miller-Vidor Lumber Company, there being no other inbound or outbound freight of sufficient consequence to be mentioned on the record or on its reports to the Commission.

The mill of the Miller-Vidor Lumber Company is located at the junction with the Santa Fe at Timber, and while the spur track to the loading platform is owned by the tap line, the Santa Fe spots the empties and switches the loaded cars. The tap line formerly switched the lumber to the Houston, East & West Texas, a distance of 12 miles, when it was in receipt of divisions. But it has had no allowances either from the Santa Fe or the Southern Pacific since August, 1908. Prior to that time it received 1 and 2 cents per 100 pounds. Its witness testified that it would be to the interest of the lumber company to have the Santa Fe haul the lumber direct from the mill rather than for the tap line to haul the lumber 12 miles to the Houston, East & West Texas for a division of 2 cents per 100 pounds. The Peach River & Gulf hauls logs over the logging spurs, which it constructs and maintains, and thence over its main track to the mill, for which it makes a charge on the books of $3 per log car against the lumber company.

The Riverside & Gulf connects with the Santa Fe at a point known as Milvid junction and extends southward for a distance of about 12 miles. It has an additional 8 or 10 miles of logging spurs, passing tracks, and sidings. Its rolling stock consists of 3 locomotives, a log skidder, and some 70 other cars, not equipped with safety appliances; and it has 1 station agent, 6 train crews, and a number of shop and trackmen. It has received no divisions since August, 1908; previous to that time it was allowed 2 cents per 100 pounds by the Santa Fe.

The mill of the controlling interests is on the tap line about a mile south of the junction with the Santa Fe. The logs are hauled in by the tap line from the logging spurs in the timber at a charge of $3 per loaded car. The tap line switches the lumber from the mill to the Santa Fe, for which it makes a charge on its books, in order that it may be credited with proper earnings, of 2 cents per 100 pounds, but no such collection is made from the lumber company.

There is also an independent hardwood mill served by the tap line, located about one-half mile south of the yellow-pine mill of the controlling interests and owned and operated by T. B. Allen &

Company. Its plant is said to be worth $175,000, and it has logging spurs extending from a connection with the tap line for several miles into its timber. The Allen Company has railroad equipment by means of which it hauls logs over its logging spurs to the tap line, over which it has a trackage right to the mill. For this privilege it pays the tap line 90 cents per loaded car. It will be seen, therefore, that the Riverside & Gulf does not haul logs to the Allen mill. In its statement of traffic and revenues, however, it includes the weight of the logs thus hauled by the Allen Lumber Company itself, and shows the earnings under the 90-cent trackage charge referred to as freight earnings. The lumber of the Allen mill amounted to about 6,000 tons for the year covered by the record; it is moved by the tap line from the mill to the Santa Fe, and for this service a charge of 2 cents per 100 pounds is made on the books. But this charge is not being collected. The explanation is that when the Allen Company located its mill on the tap line some years ago the president of the Miller-Vidor Company guaranteed that it would have the same rates to the markets as mills located on the Santa Fe proper. At that time the tap line had joint rates with the Santa Fe and was receiving an allowance of 2 cents. It is explained that if as the result of this proceeding the joint rates are restored and divisions are again received from the Santa Fe the tap line will collect the 2-cent charge on traffic of the Allen Company from the Santa Fe; but if this proceeding has another result the charge of 2 cents on the lumber of the Allen mill will be paid by the Miller-Vidor Lumber Company, under the obligation imposed upon it by the contract under which the Allen Company was induced to locate there.

The traffic of the Riverside & Gulf for the year 1910 consisted of 26,565 tons of lumber and 131,880 tons of logs, handled for the Miller-Vidor Company; 6,214 tons of hardwood lumber for T. B. Allen & Company, and about 1,500 tons of other freight, practically all of which was handled for the account of the Miller-Vidor Company.

JEFFERSON & NORTHWESTERN RAILWAY.

The Jefferson & Northwestern Railway Company was incorporated in 1899, and its capital stock, amounting to $20,000, is owned by the stockholders of the Clark & Boyce Lumber Company, which also holds its notes in the sum of $60,000. The tap line was built by Clark & Boyce as long ago as 1892 for the purpose of bringing logs to the mill, which is at a point known as North Jefferson, Tex., less than a quarter of a mile from the line of the Texas & Pacific and about a mile from the line of the Missouri, Kansas & Texas. The tap line

has about 32 miles of track connecting with these railroads and serving the mill and timber. There are also two or three small mills along the line that formerly manufactured lumber, but none of them had been in operation for two or three years prior to the hearing.

The logs are hauled to the mill of the lumber company by the tap line for a distance of 32 miles. Some logs also are brought in by the tap line from spur tracks connecting with the Missouri, Kansas & Texas, over which the tap line enjoys trackage rights for that purpose. On all log movements the lumber company is charged $5 per car, and on log movements of the latter character $2 of the charge goes to the Missouri, Kansas & Texas for the trackage privilege. The manufactured product is switched by the tap line to one or the other of the trunk lines, a distance of a quarter of a mile or 1 mile, as the case may be. It receives no allowances from the Texas & Pacific, but receives from the Missouri, Kansas & Texas a division on lumber of from 2 cents to 5 cents per 100 pounds, the average allowance on each carload of lumber moving over that route being about $22.

The tap line has no passenger traffic; and no logs or lumber were handled for others than the controlling lumber company, the traffic of which for the year 1910 amounted to 26,950 tons of logs and 10,200 tons of lumber. There was, however, a substantial movement of crossties for a firm of railway contractors at a charge of $10 per car for a haul of 18 miles. It is said that 81 per cent of the total tonnage and 82 per cent of the revenue for the year 1910 came from the traffic of the proprietary lumber company.

It was not until 1911 that the tap line filed its first report with the Commission.

BEAUMONT & SARATOGA.

At the time of the hearing the Beaumont & Saratoga Transportation Company was receiving no allowances from the trunk lines, the division of from 1 to 3 cents per 100 pounds which it had formerly secured from the Texas & New Orleans having been cut off. It was incorporated in 1906, under the Texas laws, not as a railroad common carrier, but as a transportation company. Its entire capital stock, amounting to $20,000, is held in trust for the Keith Lumber Company, which also holds notes of the tap line for about $100,000.

The track of the tap line is 12 miles in length and extends from a connection with the Santa Fe and with the Texas & New Orleans at Voth, Tex., in a westerly direction to Pelt. Its equipment consists of four locomotives and seven flat cars. The lumber company uses two of the locomotives in operating the logging tracks which connect with the incorporated tap line at various points, and the steel in which is leased from the tap line for a consideration of $100 per month that covers also the use of the locomotives. The tap line

hauls the logs from the junction of the 4 unincorporated spurs with its tracks to the mill, at a charge of $3 per car. A considerable portion of the output of the mill moves out by water in boats or barges owned by the lumber company. The lumber that is shipped by rail is frequently taken by the trunk lines directly from the mill, but the tap line sometimes switches the cars.

There is a small movement of traffic for others than the lumber company, the revenue from which amounted during the year 1911 to $257.59. The report for that year was the first that was filed with the Commission.

ANGELINA & NECHES RIVER RAILROAD.

The Angelina & Neches River Railroad was originally built by the Angelina County Lumber Company as an unincorporated logging road, extending from a connection with the Cotton Belt at Keltys, Tex., into the timber. It was incorporated in August, 1900, and capital stock amounting to $55,000 was distributed among the stockholders of the lumber company. The two companies have the same officers. The mill is at the junction with the Cotton Belt. The track of the tap line as described of record now extends to Prosser, where it connects with the Houston East & West Texas Railroad and thence easterly to Naclina, making about 20 miles in all. The tap line has one locomotive, a passenger car, and three box cars. It formerly owned logging cars and three additional locomotives, which were transferred to the lumber company to escape the operation of the state safety appliance acts. The lumber company also has about 15 miles of unincorporated track running from the terminus of the incorporated line at Naclina into the timber.

The traffic consists almost entirely of the lumber of the Angelina County Lumber Company; there are no other sawmills served by the line. A passenger service was inaugurated in November, 1910, but the traffic is light. The lumber company hauls the logs from the point where they are loaded to the mill, paying the tap line for the privilege of operating its trains over the incorporated track, a charge of 50 cents per thousand feet, log scale, which is equivalent to about 1½ cents per 100 pounds on the weight of the logs. Shipments of rough lumber are switched by the tap line from the sawmill to the Cotton Belt tracks, a distance of a few hundred feet, but the Cotton Belt itself moves shipments of dressed lumber directly from the planing mill. Traffic delivered to the Houston East & West Texas is moved by the tap line for a distance of 3 miles from the mill to Prosser. The tap line receives a division of from 1 to 4 cents per 100 pounds from the Houston East & West Texas, and from 2 to 4 cents per 100 pounds from the Cotton Belt.

SUPPLEMENTAL REPORT.

In the near future, in a supplemental report, we shall state the facts in relation to all the other tap lines whose affairs are disclosed on the record before us, and shall point out which of them are regarded by the Commission as common carriers in the service that they render to their respective proprietary companies. The cancellations by the trunk lines will be allowed to become effective on May 1 as provided in the tariffs now on file. The rights of such tap lines as we find, in the supplemental report, to be common carriers will be protected in the order that will be entered herein in connection with the supplemental report.

PROUTY, *Chairman*, concurring:

While I do not dissent from the conclusions finally announced in the majority opinion, I do dissent from the implication that the building of branch-line railroads, whether denominated tap lines, industrial lines or what not, by those persons who own an industry to be served by these railroads, should be discouraged by this Commission. While the industrial line and the tap line have been the medium through which the grossest discriminations have been perpetrated in the past my belief is that these unlawful practices can be stopped without the slightest difficulty and that the thing itself should be encouraged rather than discouraged. This view, which I have entertained from the first, is confirmed by observation and reflection, and I desire to keep it clearly before the public.

My meaning can be best illustrated by the accompanying rough diagram.

Let us assume that AB is a 100-mile section of a trunk-line railroad and that CD is a branch extending from C to D. The section traversed by this railroad produces lumber, coal, stone, perhaps various commodities. The principle is the same in all cases, although the application might somewhat differ.

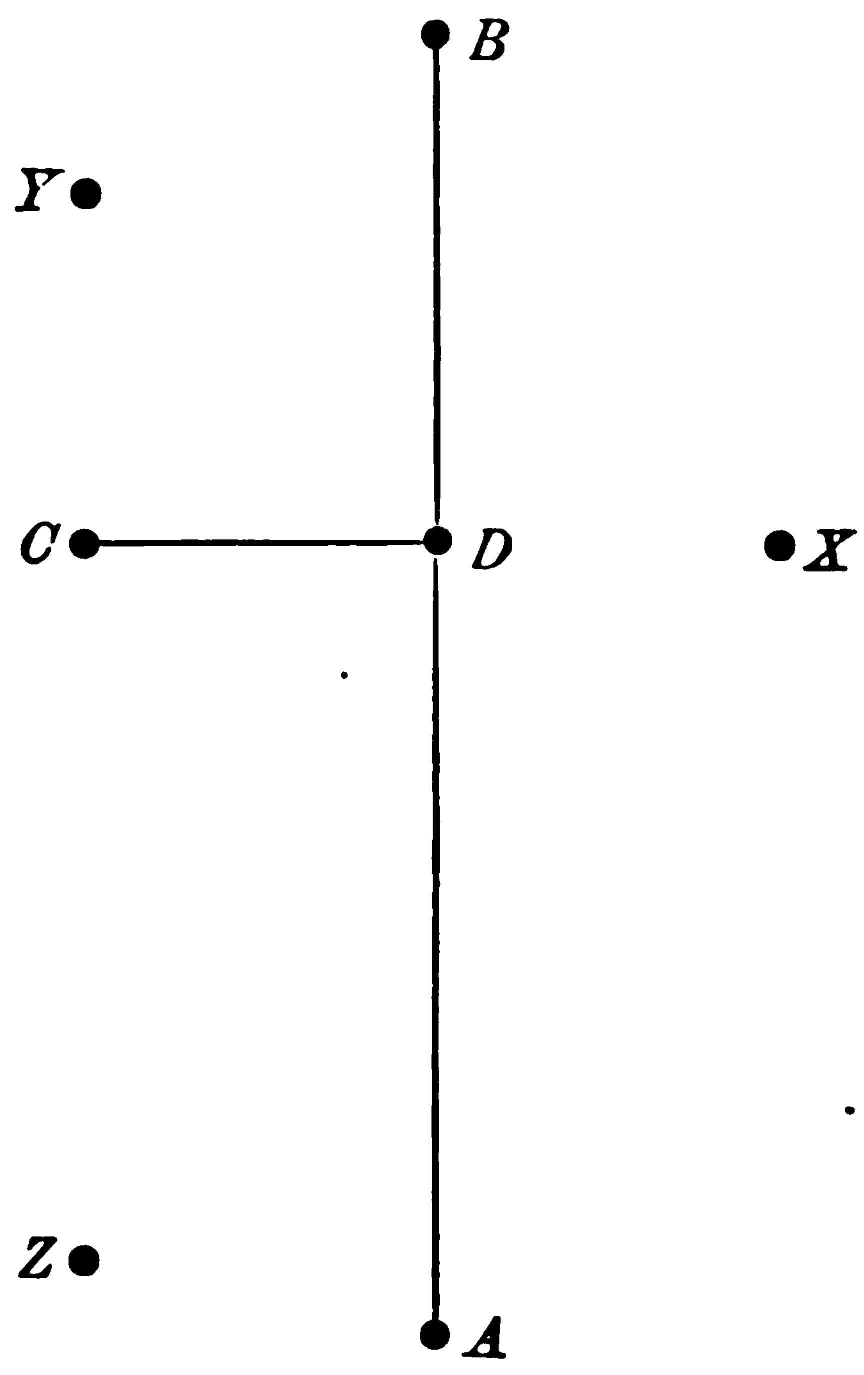
X, Y, and Z are localities distant from the main line by about the same number of miles as C, but in these localities the industry has not been developed.

The railroad AB applies to all points upon its main line and to its branch line CD the same rate to markets of consumption. X, Y, and Z can not be developed until railroads are constructed, connecting these localities with the main line. Manifestly it is for the public interest that connecting lines shall be constructed, since otherwise a monopoly in the production of the commodity at points tributary to AB is possible. By whom shall these branch railroads be built?

Manifestly the owners of property at X may construct a road from X to AB and may transport the commodity manufactured from X to AB and there ship it to destination. The cost of render-

ing this service may be, if lumber, 3 cents per 100 pounds; if coal, 10 cents per ton. Whatever the cost, it is plain that the operator at X is at a disadvantage as compared with the operator at C by the exact amount of this charge, and it frequently and perhaps usually happens that the advantage thereby obtained by the industry at C is sufficient to entirely prevent, certainly for a long time, the development at X, Y, or Z.

The inevitable conclusion is that the railroad AB absolutely dictates the development of this region. If it elects to construct its branch line to C, that locality becomes valuable, whereas if it goes to X or to Y those are the favored locations. It must be admitted



that it is most unfortunate to put the development of a country into the hands of a main-line railroad as this of necessity does. My own belief is that those persons interested in the localities other than C should be permitted, where circumstances justify, to construct a railroad from X to the main line; that the main line AB should be required to establish in connection with the branch line from X the same rate which it applies from its branch line at C, and should be required to accord to the branch line in the way of a division a sum which is fairly equivalent to the expense which it incurs in originating this traffic at C and handling it from C to D. This is certainly in the public interest; what valid objection can be urged against it?

Consider this, first, from the standpoint of the main-line railroad. That road transports the traffic from C to D at a certain cost and from D to destination at a certain other cost. If from the through rate there be deducted the cost of transporting the business from C to D, there remains the service from the main-line point D to destination. If, now, it allows the other branch line from X the same amount, it becomes a matter of indifference, so far as its profit as a railroad is concerned, whether traffic originates upon its own branch line at C or upon the independent branch line at X.

This might be urged, possibly, that if the mine or the forest at X is developed the mine or the forest at C may produce less, and the main line may therefore have less business for its own branch; but this is a matter of small consequence, which ought not to weigh in the general conclusion. Its profit is not made upon the branch line but upon the main line.

If this railroad AB itself owns lands at C which it desires to develop, then manifestly it is for its advantage that the branch line from X should not be constructed; or, if those persons interested in the main line and potential in the direction of its policy own lands at C, it is manifestly for their interest that no other similar industry should be developed; but the function of a railroad in these modern days has come to be, not the exploitation of its private property used in other than its transportation purposes nor in the enriching of those who sit in its directorate, but rather in serving the entire public impartially and for a reasonable consideration.

From the standpoint of the main-line railroad, considered purely as a railroad, there is no reason why the branch line from X should not be permitted to connect and should not be allowed a suitable division. It should be carefully noted that this only applies in its entirety to instances where the main line establishes a blanket rate upon its main line, as is usually done with producing points in case of lumber, coal, etc., and where it extends that rate to its own branch lines. If a fair mileage scale were applied, both to main line and to branch line, these difficulties would largely disappear. My proposition only goes to this: That the main-line road should be required to put the industry at the end of the independent branch line upon substantially the same basis that it puts the industry at the end of its own branch line or at a corresponding point upon its main line.

Consider this matter, now, from the standpoint of the mine or the mill. Compare the operator at C with his competitor at X.

The distance from the main line to C is the same as from the main line to X. There is no reason why the rate from X ought not to be the same as the rate from C. Suppose the same rate is applied and is paid by both these competing operators. Looking to the mill and

to the company which owns and operates the mill, manifestly there is no discrimination.

But it is said that the same individuals who own the industry at X also own the capital stock of the railroad which leads from X to the main line, and that therefore they have finally the benefit of whatever division is allowed to this independent branch line.

This branch line is performing a legitimate common-carrier service, exactly the same service from X which is performed from C. The agency which performs that service from X is entitled to a fair compensation to exactly the same extent as is the agency which performs that service from C.

If, now, the expense of constructing and operating the railroad from X to D is such as to leave no net return out of the divisions allowed by the main line, then the individuals who own the mine at X have received nothing beyond that received by those who own the mine at C, although they have invested and devoted to the public service an additional amount of capital. If the net is sufficient to pay a fair return upon the fair value of the property, they have received exactly that to which they are entitled under the constitution of the United States.

The mining company is not discriminated in favor of, for it pays the same rate as does the competitor at C. The individuals who own the railroad from X to the main line are not discriminated in favor of as against the individuals who own the mine at C, for they have only received a legitimate return upon the property which they have devoted to this public service, if it be a legitimate public service. It is true that if the division allowed to the independent branch line is excessive, that does work out a final discrimination, not in favor of the mine at X, but in favor of the individuals who own the railroad and who also own that mine. The discrimination would be exactly the same if the divisions were, with respect to traffic, not produced at the mine, but handled from the mine of a competitor upon the branch, or with respect to an entirely different species of traffic.

It is urged that this gives to the owner of property at X an advantage over the owner of similar property at Y, and this is true, for neither X nor Y can be developed without a railroad. But that sort of discrimination arises out of the fact that the operator at X has the money or the means of securing the money with which to build the railroad from X to the main line, while the owner at Y does not possess this means. Some day the importance of this aspect of the case may become such that the government itself will build and operate all these branches, but until then the most that can be done is to secure to all persons equality of opportunity, to give to the individual at Y, if he can find the money, the same chance which the individual at X possesses.

In my opinion, this right to build branch lines and obtain recognition from the main line is becoming daily of more and more consequence. Our trunk lines have been built; many, perhaps most, of the branch lines remain to be built. Upon what inducement is this future development to take place?

In the past branch lines have been often constructed to develop properties which the railroad itself owned; still more frequently to develop properties owned by those who could influence the policy of the main-line railroad.

Branch lines have often been constructed as stockjobbing propositions with a view to selling them at an extravagant price to the main line. These motives will not to any great extent operate in the future, and if there is to be a free development of our resources, if that development is not to be put entirely under the control of our railroads and the influences which dominate them, then the recognition of branch lines by the main line must be enforced.

It is significant that the three states in which the tap lines under consideration are most developed—Texas, Louisiana, and Arkansas—in every instance approve and insist upon the legal status of these railroads, the reason being, as stated by their accredited representatives before this Commission, that the recognition of the tap line promotes the development of the country by fostering the building of railroads which will otherwise not be constructed and which the country absolutely needs.

It is desirable that common carriers by rail should be strictly confined to their public functions and not permitted to engage in private commercial pursuits. While this may not be as imperative in case of branch lines as with trunk lines, since the former can be subjected to a closer scrutiny and a higher degree of control, still the ideal condition would be one in which the carrier's service was performed either by the government or by some private corporation with no interest whatever in the property transported. We should not, however, sacrifice the essential to the pursuit of the ideal, nor should we repress legitimate undertaking simply because some phases of the means employed may result in abuse. Congress might prohibit all connection between railway and private industry. As to what has actually been done, it may be observed:

First. When Congress came to declare its will in this respect by the enactment of the commodities clause, lumber was expressly excepted from the operation of that provision, thereby giving an implied sanction to unity of ownership between the lumber-carrying railroad and the commodity which is carried.

Second. The commodities clause itself as interpreted by the Su-
Court and as accepted by Congress since that interpretation

does not prohibit a common ownership of industry and railroad, provided the two are kept entirely separate and distinct in their operation. Inasmuch as the statute has not been changed since that interpretation was put upon it, it must be assumed that as so interpreted it represents the legislative will.

The abuses disclosed by the present proceeding result mainly from two causes:

(*a*) In many cases divisions are allowed on account of so-called railroads which are in reality mere plant facilities. Of the 83 cases now before the Commission, a majority are of that character.

I do not attempt to define here a railroad. I do wish to say, however, that the basic inquiry is not, in my opinion, whether the operation is great or small, but rather is it honest. Does it occupy the sphere of a railroad?

If public necessity requires that this railroad be built and operated; if, under the laws of the state in which it exists, land can be taken *in invitum* for its right of way; and if the railroad itself is, in fact, operated and maintained as a public carrier in conformity to the laws of the state which creates it, and of the United States in so far as it is subject to federal regulation, then I think it must be treated as a public servant, irrespective of the amount or the character of its traffic.

If a particular railroad is found to be a common carrier by railroad, under the act to regulate commerce, then I think, irrespective of its stock ownership, without reference to the purpose of its creation, it must be treated as such; that in all cases the trunk line may establish joint rates and allow proper divisions of those rates and, in many cases, it should be compelled to do so.

(*b*) In many instances where the allowance of a division is proper the division itself has been excessive, and this, without doubt, has inured to the benefit of the industry or of the persons or individuals who owned the industry. While there may be some doubt as to our authority in the premises, I believe we have the right to determine in these cases whether the divisions are excessive and to order them reduced to a proper amount.

If this Commission prohibits the payment of any division in all cases where the railroad is not a bona fide common carrier, and confines those divisions when properly allowable within proper limits, I am unable to see how harmful discrimination can result.

One fact has been developed which does lead to slight discrimination and which we can not apparently correct, and that is the issuing of passes to the officers of these common-carrier tap lines who are also owners and frequently officers engaged in the management of the industries. The use of these passes when traveling upon the

business of the industry undoubtedly gives to that industry an advantage over its competitor.

This is wrong and should be corrected—if not by the voluntary action of the carriers who issue and honor these exchange passes, then by Congress. But let it be noted that this vice is not confined to the insignificant tap line. Directors of main-line railroads are almost invariably engaged in private business, in the course of which free transportation is used.

Discrimination of this kind ought not to exist, but it will continue to exist until common carriers by rail are prohibited from issuing these exchange passes. When the issuing of free transportation by railroad is restricted to railroad employees who spend substantially their entire time in railroad service, with such general exceptions as may be made upon sentimental grounds and which involve no element of commerce, discrimination from this source will cease, and not until then.

I do not wish at this time to enter upon any general discussion of this tap-line question; that I have done in previous reports; but only to restate my conviction that to prohibit or discourage legitimate enterprises of this character is to deal a serious blow to the future development of this country.

I may add that I do not fully concur in the suggestion that main-line carriers may make to the owners of private railroads not common carriers allowances for the movement of lumber from the mill to the main line. I doubt whether this is a transportation service within the meaning of the fifteenth section; but even if the allowance might be under some circumstances lawful, we ought not to invite it.

There is no essential difference between a private railroad operated by steam and a tramway or a dray. When once the door is opened there is no stopping place. I believe that all these services should be performed by the railroad itself and that the shipper, instead of receiving an allowance for these accessorial services, should be compelled to pay a reasonable charge for every service rendered outside the ordinary transportation.

No. 2965.

CHAMBER OF COMMERCE OF NEWPORT NEWS, VA.,

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted June 20, 1911. Decided April 8, 1912.

Under an arrangement between defendants in force for a number of years prior to July 31, 1899, Newport News and Norfolk, Va., took equal freight rates to and from common points in associated railways territory and in southeastern freight association territory. Because of a disagreement as to divisions of the joint rates, the southern lines withdrew from the arrangement, and since that time Newport News rates to and from such common points have been on a higher basis than Norfolk rates to and from the same points. Complainant alleges that the increased rates are unjustly discriminatory and result in undue prejudice and disadvantage to Newport News. The southern lines do not extend to Newport News; but, by means of their connections with other defendant lines, they participate in Newport News traffic to and from the south, maintain through routes for the movement of such traffic, and in effect control the rates applicable thereto. Upon consideration of all the facts and circumstances of the case, *Held:*

1. That the present rate situation is unjustly discriminatory against and unduly prejudicial to Newport News.
2. That the southern carriers can not escape responsibility for such discrimination merely because their rails do not extend to Newport News.
3. That Newport News is entitled to the same rates as Norfolk to and from common points on defendants' lines in the territories referred to, not within 150 miles of Norfolk.

R. G. Bickford, *Charles C. Berkeley*, and *J. A. Massie* for complainant.

R. Walton Moore for Southern Railway Company; Atlantic Coast Line Railroad Company; Seaboard Air Line Railway; and Norfolk & Western Railway Company.

Edward R. Baird, jr., for Norfolk & Southern Railway Company and H. K. Wallcott and Hugh M. Kerr, receivers.

H. T. Wickham for Chesapeake & Ohio Railway Company.

Thomas H. Willcox for Norfolk & Portsmouth Belt Line Railroad Company and New York, Philadelphia & Norfolk Railroad Company.

M. Carter Hall for Atlantic Coast Line Railroad Company.

Report of the Commission.

By the Commission:

The Chamber of Commerce of Newport News, Va., by petition, filed November 15, 1909, assails the rates charged by defendants for the transportation of traffic between Newport News and points in associated railways and southeastern freight association territories as unjustly discriminatory and unduly prejudicial to the interests of that city when compared with rates between Norfolk, Va., and the same points.

Newport News is at the southern point of the peninsula which lies between the James and York rivers in Virginia. It is about 12 miles by water from Norfolk, which lies to the south on the east side of the Elizabeth River near where it empties into Hampton Roads. Newport News is an important port of the Atlantic seaboard and is well situated for manufacturing purposes. It stands fifth in volume of imports and exports, in this respect exceeding Norfolk, which stands sixth. The only railway whose tracks reach Newport News is the Chesapeake & Ohio, which has its principal eastern terminal at that point and maintains there float-bridges, wharves, piers, and other terminal facilities.

The Norfolk & Western Railway reaches Norfolk by rail and has a terminal there and also one at Lamberts Point, on the east side of the Elizabeth River. The Norfolk Southern Railway has a terminal at Berkley, which is a part of the city of Norfolk. The Southern Railway and the Atlantic Coast Line Railroad, hereinafter referred to as the Southern and Coast Line, respectively, each has a terminal at Pinners Point, on the west side of the Elizabeth River. The Seaboard Air Line Railway, hereinafter referred to as the Seaboard, has a terminal at Portsmouth, on the west side of the Elizabeth River.

The New York, Philadelphia & Norfolk Railroad Company maintains tracks extending from connections with the Southern and Coast Line to Port Norfolk, on the west side of the Elizabeth River, where it has very complete terminal facilities. The Norfolk & Portsmouth Belt Line Railroad Company, hereinafter called the Belt Line, maintains track connections with the other lines except the Chesapeake & Ohio. Its capital stock is owned in substantially equal shares by the other companies. All the companies named are parties defendant in this proceeding.

At Port Norfolk and Portsmouth on the west side of the Elizabeth River, at Norfolk proper; at Lamberts Point on the east side of the river, and at Berkley on the west side of the eastern branch of the river, are numerous piers, float-bridges, wharves, and warehouses belonging to the several defendants. The Chesapeake & Ohio

has a terminal in Norfolk where it maintains piers, a float-bridge, yards, and warehouses. This terminal is reached by water, a system of car floats and a barge line service being maintained by that company between Newport News and Norfolk.

Interchange of traffic between the several defendants is effected by means of the short-line tracks of the New York, Philadelphia & Norfolk, or by the Belt Line, or both, or by the floating equipment owned and operated by the other defendants, and also by drayage service. The Southern receives and delivers import and export traffic at Newport News either by means of its own floating equipment or that of the Chesapeake & Ohio. The Coast Line and Seaboard use for this service the floating equipment of the Chesapeake & Ohio, and the Norfolk & Western uses the floating equipment of the Southern.

Both Newport News and Norfolk sustain intimate commercial relations with the south. They are alike dependent largely upon the south, and especially upon the sections known as associated railways territory and southeastern freight association territory. These sections, generally speaking, embrace all the territory east of a line drawn from Chattanooga, Tenn., southward through, but not including, Birmingham, Selma, and Montgomery, Ala., to Pensacola, Fla., known as the Chattanooga-Birmingham line. They are reached by the rails of the Southern, Coast Line, Seaboard, Norfolk Southern, and their connections, and in part by the Norfolk & Western and its connections. These carriers, except the Norfolk & Western, are all members of the associated railways and southeastern freight association, or of one or the other of said organizations, and the territories in which they operate when referred to hereafter will be called the association territories.

For a number of years Newport News had the same rates as Norfolk to all common points in each of the association territories, under tariffs to which the Chesapeake & Ohio, Southern, Coast Line, Seaboard, and their connections were parties. Through routes and joint rates were maintained via both Norfolk and Richmond. The arrangement was in part the result of a resolution adopted by the associated railways December 4, 1894, which allowed the Chesapeake & Ohio a prorate based on 80 miles to and from Portsmouth, Norfolk, Pinners Point, and Richmond, and provided that rates from Newport News, and rates on import and export business through Newport News, to common points in the association territories, should be the same as to and from Norfolk, applying on all business southbound and on export business northbound. For a like length of time, or a little longer, Newport News and Norfolk took the same rates to and from local stations on the Southern in both of said ter-

ritories. At the same time Newport News enjoyed the same rates as Norfolk to and from common points west of the Chattanooga-Birmingham line.

The joint rates were maintained until July 31, 1899. The rates to and from local stations on the Southern Railway continued until July 28, 1900. In the meantime a dispute arose between the carriers who were parties to the joint rates as to the divisions allowed the Chesapeake & Ohio on traffic to and from points east of the Chattanooga-Birmingham line. That company demanded larger divisions than it was receiving, and the demand was refused by the southern lines. The dispute finally resulted in the withdrawal of the southern carriers from the arrangement. The withdrawal was by resolution adopted at a meeting of the members of the associated railways in June, 1899, which declared as follows:

Whereas the Chesapeake & Ohio Railway is unwilling to continue the basis of division adopted at meeting held in Philadelphia, Pa., December 4, 1894:

Resolved that effective August 1, 1899, all through rates and divisions between Newport News, Hampton, Phoebus, and Old Point, Va., and points in the territories of the associated railways and the southeastern freight association east of Chattanooga, Birmingham, Selma, Montgomery, and Pensacola, be withdrawn; through rates thereafter to be made on lowest combination.

Thereupon the joint rates, except on import and export traffic, were canceled as to all common points in the association territories. While through routes have remained open substantially as before via both Norfolk and Richmond, the rates to and from Newport News have been maintained on a basis of differentials over Norfolk on a scale of 15 cents per 100 pounds, first class, down to 4 cents, class D. Commodity rates have obtained on substantially the same basis.

The Chesapeake & Ohio Company's dissatisfaction with the former adjustment involved only the divisions it received. At one time the southern lines offered to make some slight concessions in the matter, but the offer was refused. On a subsequent date the Chesapeake & Ohio Company, with the view to restoring to Newport News the same rates as Norfolk, offered to accept any reasonable and fair divisions which the southern carriers might themselves agree upon, but the offer was declined. The southern lines assumed the attitude that they would not reduce their rates in order to place Newport News on the Norfolk rate basis.

The Chesapeake & Ohio still adheres to the view that Newport News should have the same rates as Norfolk to and from the south, and has made repeated efforts to bring about such result. Complainant has likewise on various occasions vainly sought to secure a restoration of the former rate status.

As to the territory west of the Chattanooga-Birmingham line reached by the southern carriers and their connections, and by the

Chesapeake & Ohio and its connections, the rates to and from Newport News have continued the same as rates to and from Norfolk. This is also true of points north of the Ohio River, reached by the Chesapeake & Ohio and its connections.

On Newport News traffic to or from points west of the Chattanooga-Birmingham line, which usually moves via Richmond, the divisions of the joint rates received by the Chesapeake & Ohio are measured by a scale of 26 cents per 100 pounds, first class, down to 8 cents. Divisions of commodity rates are on relatively the same basis.

These differentials or arbitraries are all absorbed by the southern carriers. On Newport News traffic to or from common points east of the Chattanooga-Birmingham line, whether via Richmond, Norfolk, Portsmouth, or Pinners Point, the differentials to the Chesapeake & Ohio are paid by the shipper as a part of the combination through rates. Thus it appears that by giving Newport News the same rates as Norfolk to and from territory west of the Chattanooga-Birmingham line, the southern carriers absorb greater differentials than they would be required to absorb to give Newport News the same rates as Norfolk to and from the territory east of that line. Notwithstanding the large differentials thus absorbed, the western business is freely and profitably handled by the southern lines.

As to certain classes of traffic Newport News rates continued the same as Norfolk rates after July 31, 1899. This was true of pig iron from Johnson City, Tenn., and points adjacent, and from iron-producing sections of Georgia and Alabama, until some time after the hearing in this case. From various points in Alabama the rates on lumber are also the same to Norfolk and Newport News.

The dry dock and ship building company's large plant at Newport News creates a market at that point, especially for iron and lumber. Deliveries are usually made to Newport News by the floating equipment of the carrier handling the traffic, or that of the Chesapeake & Ohio if it moves via Norfolk, Portsmouth, or Pinners Point, or via the Chesapeake & Ohio rails if the movement is through Richmond. The southern lines either make the deliveries themselves without charge, or absorb the differentials received by the Chesapeake & Ohio for its service.

Between Baltimore and various important points in the association territories the southern lines and their connections maintain lower rates than to or from Newport News. To Albany, Americus, and Bainbridge, Ga., the first-class rates are $1.13 per 100 pounds from Newport News; 98 cents from Baltimore and Norfolk; and $1.05 from Philadelphia and New York. Substantially the same situation is true of Dothan, Troy, and Andalusia, Ala., to which the

first-class rates are $1.21 from Newport News; $1.13 from Baltimore; and $1.20 from Philadelphia and New York. These instances are illustrative of the situation as to numerous important points in the association territories.

As a general rule the southern lines receive considerably less in the divisions of the through rates on traffic to and from Baltimore than the rates they maintain to and from Norfolk. Of the first-class rate of 98 cents from Baltimore to Albany, Bainbridge, and Americus, Ga., they receive 80 cents, whereas the first-class rate from Norfolk to the same point is 98 cents. Out of 92 cents from Baltimore to Camden, S. C., they receive 71.3 cents, whereas the rate from Norfolk to the same points is 82 cents. Out of 89 cents from Baltimore to Columbia, S. C., they receive 66.4 cents, whereas the rate from Norfolk to the same point is 76 cents. These instances involve only the first-class rates, but are illustrative of divisions as to the classes generally, and also of the rates from Baltimore to other southern points.

To many points the divisions received by the southern lines on traffic from Baltimore are, on an average of all the classes, more nearly equal to their rates from Norfolk to the same points. For instance, on first-class traffic from Baltimore to Raleigh, N. C., the proportion of the rate received by the southern lines is 57.6 cents, or 3.4 cents less than the first-class rate of 61 cents from Norfolk. On traffic from New York and Philadelphia the average division of the through rate exceeds the local rate from Norfolk. Illustrations appear of record of substantially the same situation as to other points in North Carolina and as to points in South Carolina and Georgia.

On northbound traffic from Atlanta, Ga., by rail to Norfolk or Portsmouth and thence by water to Baltimore, the divisions received by the southern lines are likewise considerably less than their rates on the same traffic from Atlanta to Norfolk. On some classes of traffic the rail-and-water rates from Atlanta to Baltimore are about the same as the all-rail rates from Atlanta to Norfolk or Richmond. On the whole the record clearly demonstrates that as a rule the divisions received by the southern carriers on traffic between Baltimore and southern points, whether southbound or northbound, are less than their rates on the like kind of traffic between Norfolk or Richmond and the same southern points.

There are certain points in Virginia to which are applied what are known as "Virginia cities" rates because of competitive conditions existing at those points. Among them are Richmond, Norfolk, Petersburg, Portsmouth, Lynchburg, Roanoke, and West Point. Only the Southern Railway, however, reaches West Point, but it

has extended "Virginia cities" rates from West Point to practically all common points in the association territories; also to local stations on its own line in said territories and to certain local stations on the Coast Line and the Seaboard in associated railways territory. Since the hearing in this case the rates to West Point have been advanced to a parity with Newport News rates, except to points on the Seaboard in Georgia, Alabama, and Florida. Complainant contends that there is much greater reason for the extension of "Virginia cities" rates to Newport News than there can possibly be for maintaining them at West Point.

Between Lynchburg and the south the Southern Railway controls the rates. The Norfolk & Western exercises the same influence as between Roanoke and the south. Neither the Coast Line nor the Seaboard reaches Lynchburg or Roanoke, and yet "Virginia cities" rates are applied between those points and points south reached by both lines. They participate in Lynchburg business in connection with the Chesapeake & Ohio and Norfolk & Western. Complainant contends that there is no substantial difference between the Newport News and Lynchburg situations and insists that since the Coast Line and Seaboard have joined the Chesapeake & Ohio and Norfolk & Western in applying "Virginia cities" rates between Lynchburg and the south they should be willing to join the Chesapeake & Ohio in a similar arrangement between Newport News and the south.

Defendants insist that the Roanoke situation differs substantially from that of Newport News, inasmuch as the Norfolk & Western owns a line which penetrates the Carolina territory, whereas no railway line extends from Newport News to any part of the south. Complainant insists that as the southern lines receive only a short haul on traffic from Roanoke delivered to them by the Norfolk & Western, while they enjoy a long haul on traffic originating at Newport News, the argument for "Virginia cities" rates is in favor of Newport News over Roanoke, if a preference should be shown either point.

The chief reason urged by the southern carriers for not giving "Virginia cities" rates to Newport News is that there is no competition to compel such action. But the same situation exists at Roanoke. There is no competition to compel the southern lines to maintain "Virginia cities" rates from that point to points beyond the terminus of the Carolina extension of the Norfolk & Western.

By the actions of defendants, as just recited, Newport News is undoubtedly placed in a position of material disadvantage as compared with Norfolk. The question is whether such disadvantage is the results of unjust discrimination or undue or unreasonable prejudice. due to the rate adjustment. In *Daniels* v. *C., R. I. & P. Ry.*

Co., 6 I. C. C., 458, this Commission, speaking of the third section of the act to regulate commerce, said:

In determining whether any rate or set of rates is unjust or unreasonable, and whether any person, locality, or kind of traffic is thereby subjected to undue or unreasonable prejudice or disadvantage, it seems entirely appropriate to take into consideration all the facts and circumstances which bear upon the relation of rates to different communities. When Congress enacted that one locality should not have undue preference in rates or facilities over another locality, or be subjected to any unreasonable prejudice or disadvantage, it opened the door for and made material any evidence which tends to throw light upon the question of undue preference or prejudice. These terms imply comparison of relative locations, of natural or acquired advantages, of the reasonableness of charges *per se* and in their relation to other rates on the various lines which serve the competing localities.

As to natural advantages, Newport News and Norfolk are practically on the same footing. Their harbors are ample and substantially equal. Both depend upon the south for the materials used in their manufactories and for markets for their manufactured products.

The Chesapeake & Ohio avers its belief to be that Newport News suffers discrimination in not having the same transportation rates as Norfolk, and expresses willingness to unite with the southern lines in establishing to and from that point equal rates with Norfolk, and to accept such divisions of the joint rates as may be agreed upon as reasonable and fair.

The Southern, Coast Line, Seaboard, and Norfolk & Western contend that their lines do not serve Newport News, and for that reason they can not be held responsible for any discrimination that may exist against Newport News. While it is true that none of their lines actually reaches Newport News, nevertheless they all participate in Newport News traffic to and from the south by way of Norfolk or through connections with the Chesapeake & Ohio at Richmond.

Several authorities are cited by counsel for defendants in support of their contention. *Eau Claire Board of Trade* v. *C., M. & St. P. Ry. Co.*, 5 I. C. C., 264; *Central Yellow Pine Asso.* v. *V., S. & P. Ry. Co.*, 10 I. C. C., 193; *Chicago Lumber & Coal Co.* v. *T. S. Ry. Co.*, 16 I. C. C., 323; *National Petroleum Asso.* v. *M. P. Ry. Co.*, 18 I. C. C., 593; and *Schmidt & Sons* v. *M. C. R. R. Co.*, 19 I. C. C., 535.

These cases do not sustain the contention in support of which they are cited. In the *Eau Claire case* the ruling was predicated upon the fact that the defendants, other than the Chicago, Milwaukee & St. Paul Company, not only did not reach Eau Claire, but did not engage directly or indirectly in its carrying trade. The basis of the ruling in the *Central Yellow Pine Association case* was the fact that the carriers did not make or participate in the rates complained of and

did not engage at all in the transportation of lumber from any of the mills of complainants. The other cases are of similar import.

The southern carriers participate actively in Newport News traffic to and from the south and southwest, and they practically control the rates between Newport News and points within association territories. The fact that their rails do not extend to Newport News can not relieve them from responsibility for the effect of rates which they control and in which they participate. *R. R. Com. of Tenn.* v. *A. A. R. R. Co.*, 17 I. C. C., 418; *Indiana Steel & Wire Co. v. C., R. I. & P. Ry. Co.*, 16 I. C. C., 155; *Chamber of Commerce of Ashburn, Ga.*, v. *G. S. & F. Ry. Co.*, 23 I. C. C., 140. That they have largely, if not wholly, controlled rates to and from the south both as to Newport News and Norfolk for a number of years can not, on this record, be doubted. They were responsible for the rate adjustment which obtained from December 4, 1894, to July 31, 1899. They withdrew from that arrangement in pursuance of a resolution adopted at a meeting of their duly authorized agents; and by concerted action since that time they have maintained rates between Newport News and the south on a higher basis than their rates between Norfolk and the same territory.

By concert of action they maintain through rates between Baltimore and common points in association territories on a lower basis than their Newport News rates. The southern lines not only participate in the carrying trade of Newport News, but they practically control the rates applied to such trade as to all southern territory east of the Chattanooga-Birmingham line.

That the rates complained of do result in serious discrimination against Newport News in favor of Norfolk can not be gainsaid upon the facts. It is further contended, however, that the evidence is insufficient to show undue or unreasonable discrimination, such as is condemned by the act.

The defense is that the rates complained of are the result of competitive conditions, and for that reason can not be regarded as unlawful even though discriminatory and prejudicial in their operation. It is undoubtedly true that when competitive conditions are sufficiently potent to compel lower rates to one locality than are maintained by the same carriers to another locality similarly situated, such competition may be accepted in justification of a resulting preference to the favored locality, which, but for such competition, might be condemned as undue or unreasonable. *E. T., V. & G. Ry. Co.* v. *I. C. C.*, 181 U. S., 1. It is not to be assumed, however, that the mere fact of competition, regardless of its character, will relieve carriers from the limitations of section 3. Directly the opposite view was taken in the case of *I. C. C.* v. *A. M. Ry. Co.*, 168 U. S., 144.

Tested by these established principles, can it be said that the rates complained of are the result of competitive conditions of a character beyond the control of defendants? We think not. No question of competition or other condition, beyond the control of defendants, is suggested as having had anything to do with the original arrangement for joint rates, or with the withdrawal of the southern roads from the arrangement, or with their refusal to restore it.

It is no doubt true that the rates between Newport News and points west of the Chattanooga-Birmingham line are influenced by competition induced by the Chesapeake & Ohio and its connections whose lines penetrate that territory. This accounts for the equal rates between those points and Newport News and Norfolk, inasmuch as the Chesapeake & Ohio reaches both cities either by all rail or by rail and water. As to this western situation, however, the rate is the material matter, and not the reasons which induced it. Its significance arises from the fact that the southern lines handle traffic between that territory and Newport News via Richmond at a profit, even though they absorb a differential to the Chesapeake & Ohio on a scale of 26 to 8 cents per 100 pounds over the Richmond, or "Virginia cities" rate; whereas, as to traffic between Newport News and points east of the Chattanooga-Birmingham line there is included in the rate a differential to the Chesapeake & Ohio on a scale of 15 to 4 cents per 100 pounds over the Norfolk, or "Virginia cities" rate, which is not absorbed by the southern lines but is paid by the shipper. The result is that the southern lines get much less out of the rates between Newport News and points west of the Chattanooga-Birmingham line than they get out of the rates between Newport News and points east of that line.

In explanation of the equal rates on pig iron from Johnson City and other points in Tennessee, Alabama, and Georgia, east of the Chattanooga-Birmingham line, it is said that these rates are based on or bear a relation to the rate from Birmingham; and as Birmingham has the same rate to Newport News and Norfolk the like result must obtain from the eastern iron-producing fields. There is a market for pig iron at Newport News, due largely no doubt to the extensive shipbuilding operations carried on there; and it is not difficult to understand why carriers serving the iron-producing fields east of Birmingham should so adjust their rates with relation to Birmingham as to enable them to share in the Newport News trade.

In justification of the equal rates on exports and imports defendants urge that from a transportation viewpoint there is a recognized difference between that kind of traffic and domestic traffic, and it is insisted that no undue prejudice or disadvantage can result to New-

port News on that account. That ocean competition as well as circumstances and conditions beyond the seaboard are to be considered in determining whether differences in rates as between foreign and domestic traffic are unreasonable or unduly discriminatory or preferential, is a well-settled proposition. *T. & P. Ry. Co.* v. *I. C. C.*, 162 U. S., 197; *Pittsburgh Plate Glass Co.* v. *P. C. C. & St. L. Ry. Co.*, 13 I. C. C., 87; *In the Matter of Restricted Rates*, 20 I. C. C., 426. Complainant's chief contention, however, is not that there is any discrimination in the export or import rates as compared with the local rates from Newport News, but rather that the southern lines, by engaging in export and import business via Newport News, make themselves common carriers as to that point, and thereby assume an obligation to transport domestic traffic also, and to maintain the necessary equipment for that purpose. It is insisted that they may not be allowed to compete for and handle foreign business and at the same time refuse to handle domestic business. *M. P. Ry. Co.* v. *Larabee Flour Mill Co.*, 211 U. S., 612.

In explanation of the lower rates in force between Baltimore and the south than between Newport News and the south, it is said that this result is induced by water competition between Baltimore and south Atlantic seaports, accentuated by state control of local rates from the ports to interior points. It is to be observed in this connection that the water equipment from Norfolk and Portsmouth to Baltimore, which operates in connection with the southern lines, namely, the Chesapeake Steamship Company and the Baltimore Steam Packet Company, are either owned or controlled by the southern carriers. It is doubtless true that competition induced by the Merchants & Miners Transportation Company, which operates a line of steamers between Baltimore and Savannah, does in some measure affect the rail-and-water rates between Baltimore and various southern points, but the all-water rates are not shown, nor is the evidence in other respects of a definite character. As to points so situated it also appears that rates are in some instances affected by the movement of Baltimore traffic via coastwise steamboat lines operating from the ports of Savannah and Brunswick, Ga.

In view of all the above considerations, we are entirely satisfied from the record that the situation at Newport News is not the result of competitive or other conditions beyond the control of the defendants.

Upon the record the abrogation of the rate adjustment that formerly existed was the result solely of the stated disagreement with the Chesapeake & Ohio Company.

None of the defendants contends that a shrinkage in its revenues, necessary to establish Norfolk rates to Newport News, would make

the reduced rates unremunerative. On the contrary, it is freely admitted that the divisions of the southern carriers on traffic to and from Baltimore and on traffic to and from points west of the Chattanooga-Birmingham line are sufficient to produce a fair and reasonable revenue and to make that business attractive and profitable, even though such divisions amount to less than Norfolk rates.

The chief ground of opposition to a restoration of equal rates to Newport News is based on the claim, strongly urged by the southern carriers, that if that were done it would invite complaints and pressure from other points not on their lines for like privileges.

Cases of alleged undue preference or prejudice must be adjudged upon their respective merits, and seldom, if ever, may such cases be controlled by results of other controversies supposed to be of like nature. But however much weight may be attached to the stated considerations we could not under the law deny the relief asked in this proceeding on the ground that other points similarly situated, if such there be, might thereby be induced to ask for like relief. *Indianapolis Freight Bureau* v. *C., C. C. & St. L. Ry. Co.*, 16 I. C. C., 56.

We are without the benefit of any testimony from the traffic officials of the several defendants who established the equal rate adjustment of December 4, 1894. They were not present to testify at the hearing. The officials whose testimony was taken had no part in bringing about the former adjustment and were without definite knowledge as to the conditions or reason which induced it. There is no claim that the equal rate adjustment of December 4, 1894, was at any time during its continuance unsatisfactory to the southern lines, or that the rates thereunder were not remunerative. In the light of the record we are bound to assume that these rates were regarded by the officials responsible for them as reasonable and just to all parties. The dissatisfaction of the Chesapeake & Ohio Company was not with the rates, but with the divisions it received.

Viewing the entire record in the light of the authorities cited and of all the facts and considerations stated, we are of opinion and find that under the present rate adjustment there is unjust discrimination against Newport News, and that the effect of such discrimination is to subject Newport News to undue and unreasonable prejudice and disadvantage, as compared with Norfolk.

The record shows that through routes already exist via which traffic is transported under through bills of lading between Newport News and the south. We are of opinion, and find, that joint rates should be established via such through routes between Newport News and all common points outside Virginia in associated railways and southeastern freight association territories, and that such joint rates as to points not within 150 miles of Norfolk should not exceed the

rates contemporaneously applied by defendants between Norfolk and the same points.

The record contains suggestions that in the event joint rates should be established as prayed, the point of interchange should be at Richmond instead of Norfolk. We think this is a matter which the carriers should determine for themselves. If the carriers can not agree among themselves, the Commission will determine the matter.

Another suggestion is that by reason of certain switching and other terminal charges applied to traffic originating at or destined to Norfolk, to give Norfolk rates to Newport News would be to place shippers at the latter point in a better position than shippers at Norfolk. But this is a matter for the carriers themselves to guard against in the arrangement and publication of their tariffs. It is sufficient for us to say that our finding goes no further than that Newport News is entitled to be placed, and should be placed, on an equal rate basis with Norfolk with respect to the southern territory in question.

Still another suggestion is that the giving of Norfolk rates to Newport News would necessitate the extension of the lighterage limits of Norfolk harbor to include Newport News, and that such extensions would involve complications that might seriously disturb the situation as it exists at Norfolk to-day. This is also a matter for primary consideration by the carriers themselves.

The Old Dominion Steamship Company participates in handling through traffic between Newport News and the south in connection with several of the southern lines. The company has a capital stock of $1,500,000, of which the Southern Railway, the Seaboard Air Line, and the Norfolk & Western each owns $210,000, and the Chesapeake & Ohio $120,000. Though necessarily interested in the present controversy, that company is not a party to this proceeding.

We shall enter no order in the case at this time. The defendants will be expected within a reasonable time to file tariffs under which the findings herein made will be carried into effect. If they do not do so on or before June 1, 1912, the Commission will then take such action as to it may seem proper in order to give effect to its findings, and the case will be held open for that purpose.

No. 3942.

COLONIAL SALT COMPANY ET AL.

v.

MICHIGAN, INDIANA & ILLINOIS LINE ET AL.

Submitted March 7, 1912. Decided April 8, 1912.

A boat line, incorporated as a common carrier, is owned and operated in the interest of a salt company; it publishes no rates except upon salt in cargo lots; and it uses as terminal facilities the docks and warehouses of the salt company by whose agents and employees all shipments must be handled; *Held*, That the boat line is a mere device to defraud the law and payments made to it by connecting rail carriers in the guise of divisions are rebates.

Walter E. McCornack for complainants.

John B. Daish for Michigan, Indiana & Illinois Line.

Norris & McPherson for Ludington Transportation Company.

F. B. Houghton for Atchison, Topeka & Santa Fe Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company; Colorado & Southern Railway Company; Fort Worth & Denver City Railway Company; and Wichita Valley Railway Company.

C. C. Wright and *C. A. Vilas* for Chicago & North Western Railway Company.

R. V. Fletcher and *A. P. Humburg* for Illinois Central Railroad Company.

Garrard Winston for Chicago & Alton Railroad Company; Chicago Great Western Railroad Company; and Chicago River & Indiana Railroad Company.

James Stillwell for Cincinnati, Lebanon & Northern Railway Company; Cleveland, Akron & Columbus Railway Company; Grand Rapids & Indiana Railway Company; Pennsylvania Railroad Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; and Vandalia Railroad Company.

Morison R. Waite and *O. S. Lewis* for Baltimore & Ohio Southwestern Railroad Company and Cincinnati, Hamilton & Dayton Railway Company.

Knapp & Campbell for Elgin, Joliet & Eastern Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

There are three important salt fields in the middle west, the Ohio field, the eastern Michigan field, and the western Michigan field. Their more immediate markets lie north of the Gulf of Mexico and between the Missouri River on the west and Pittsburgh on the east. In that territory the rate adjustments are such, on the face of the tariffs, as to enable the three fields to reach all points on a substantial parity of rates. The complaint alleges, however, that the dominant salt interests, referred to herein as the salt companies, by securing charters under state laws and operating their private boat lines on the great lakes as alleged public carriers, have succeeded, through divisions out of the joint rates established with the boat lines by the defendant rail lines, in entirely destroying the rate fabric which was originally intended and now purports to give all competing salt companies an equal access to the markets in the territory described. It is further alleged that these boat lines are not common carriers but are mere departments of the salt companies; that they are mere blinds or dummies through which the parity of rates to the markets of consumption is utterly destroyed; that although the divisions out of the through rates are paid to the boat lines, the salt companies are the real recipients of them as completely as though paid directly to them; that as the result of these unlawful arrangements one of the salt companies has been able to build up a business as large as the combined business of the ten complainants; and that the ownership of the boat lines, under the cover of which the salt companies receive concessions out of the rates on the pretense that they are common carriers, enables them often to sell their product at cost or less than cost in unfair competition with the complainants and to their material detriment, and permits them at the same time reasonably to prosper with the aid of the earnings of their alleged transportation lines.

These are grave charges and if sustained by the evidence it is clear that the rail lines and the salt interests engaged in the transaction, as well as their respective officials and agents, are violating both the letter and the spirit of the act. The situation means that the act fails of being an efficient instrument for the correction of the wrongs and oppressions that flow from the unfair practices of public carriers unless there is to be found in its provisions, or in the terms of related legislation, authority to put an end to this unlawful relation, to punish those that are parties to it, and to afford redress to those that have suffered from it.

A careful study of the voluminous record now before us reveals the following state of affairs:

Prior to 1900 the International Salt Company of Illinois carried its salt from Ludington and Manistee to Chicago, Milwaukee, and other points on the lakes, in vessels chartered by it for the purpose. The cost of the vessel service is shown to have been 8 cents to Chicago for a barrel containing 300 pounds of salt, and 7 cents a barrel to Milwaukee. The salt company at its own expense delivered the cargo at the ship's rail at Ludington and Manistee and received it at the rail of the vessel at the ports of destination. The water service included neither storage in warehouses, dockage, wharfage, nor cooperage. It included nothing except the mere water haul. The expense of maintaining the warehouses at the ports of destination, of barreling and preparing the salt for sale, and all other matters of that nature were borne by the salt company.

In February, 1900, the salt interests in question caused the Michigan, Indiana & Illinois Line to be chartered under the laws of Illinois; and thereupon certain rail lines established joint through rates with it to various destinations. The joint rates to points on the Missouri River were fixed at 53 cents a barrel, based upon the local all-rail rate of 46 cents then in effect from Chicago, plus 7 cents per barrel to cover what the salt company had been paying to chartered vessels to get its salt across the lake. The rates were apparently published in cents per 100 pounds, but we have given their result per barrel because at that time salt apparently moved largely in that form, and the rates are so stated on the record. After the consummation of these arrangements, divisions ranging from 30 to 35 per cent were allowed to the boat line out of the through rates to all destinations between the Mississippi and the Missouri rivers. In other words, although it had theretofore cost the salt company 7 and 8 cents a barrel to land its salt across the lake, its boat line now commenced to receive from 16 to 18 cents a barrel out of the joint through rate. This arrangement seems to have been made effective simultaneously with the incorporation of the boat line.

Having no terminals of its own at Chicago the boat line rented the dock and warehouse facilities of its proprietary salt company; that is to say, the boat line entered into a formal contract with the salt company to furnish the facilities and labor necessary to perform the terminal service for it at that point. In other words, what the salt company had theretofore been doing for itself at Chicago with respect to its own salt, was now made the subject matter of a contract between itself and its boat line. It therefore continued to receive its salt at the rail of the vessel, to handle it into its warehouse, and there to take care of it and later to load it into cars for the outward movement, exactly as it had been doing for itself and at its own

expense when it was using chartered vessels. As salt commenced to be received at the lake ports largely in bulk, there was need of a place where it could be stored economically and later barreled and otherwise prepared for sale and shipment. The salt company therefore secured such facilities; and there its salt was received from the chartered vessels, and the storage and other necessary operations preceding the outbound movement were carried on by it at its own cost. But after it had incorporated the boat line, the latter commenced to go through the form of paying the salt company for these services. Out of the through rates which the rail lines have established with it the boat line now pays the salt company 40 cents a ton for receiving its own salt at the rail of its own ship, handling it, storing it in its own warehouse and there looking after it, and subsequently reloading it into cars for outbound movement. The storage period is fixed at twelve months. On salt in packages it makes an additional allowance to the salt company of 1¾ cents per barrel for moving the barrels from the hold of the steamer to the rail. The boat line, in addition, pays the salt company $2.05 per hundred barrels for any recoopering required on salt handled in that form. In other words, the rail lines, out of their earnings on the salt traffic from Chicago, now relieve the salt company of all these expenses through divisions paid to its boat line.

Salt moving from Buffalo to Chicago is shipped altogether in bulk, and the greater part of it moves in tramp steamers chartered by the boat line, its own steamers being ordinarily used in moving salt from other lake ports. The salt reaches Buffalo from Retsof on a rail rate which requires the Erie to put it aboard the vessel. The salt company is the exclusive selling agent of that salt in this territory. At Chicago and other ports of destination the cargo is unloaded by employees of the salt company; it is stored in the salt company's warehouse and is subsequently loaded by its employees into the outbound cars. For these services, as already described, the boat line goes through the form of paying the salt company 40 cents a ton. A fair charter rate paid by the boat line to the tramp vessel is 45 cents a ton, although in the early and late seasons the rates are somewhat higher. The boat line receives from the rail lines out of the joint through rate $1.80 a ton as a typical division. Without having touched the salt the net result of the transaction to the boat line is the difference between the latter sum and the 85 cents per ton which it has paid to the salt company and the tramp steamer; and as the boat line is the property and asset of the salt company and ordinarily moves salt for no one else, this net revenue accrues to the salt company. In addition it has received 40 cents a ton for its alleged services on its own salt.

It will serve no useful purpose to go further into these details. The record shows very clearly that the salt company by a mere

manipulation of the situation has successfully evaded the law for some years and thereby enjoyed very material advantages over its competitors.

It will throw some light on the very substantial benefits accruing to it through these arrangements between its boat line and the rail carriers to look for a moment into the financial results of the boat line operations. It began business with only $500 in cash. The complainants suggest a doubt as to whether even that amount was actually paid in. But counsel for the boat line asserts that the payment was in fact made. The balance of its capital stock of $50,000 was issued to the salt company in alleged consideration of the assignment by it to the boat line of a contract under which a firm of vessel owners had undertaken to transport salt for the salt company. If we correctly understand his testimony the principal witness for the defendant intended to leave the impression that the boat line had acquired its vessels with invested capital. But the record clearly demonstrates that this is not the fact. There is no showing that any new capital was invested by the salt company in the boat line beyond the original $500 said to have been paid over to it in cash.

From such a beginning the boat line has grown to its present proportions. The complainants contend that its assets amount to $500,000. For want of proof we do not accept this figure. On its own books the net assets appear at $173,451.03, of which amount $155,000 represents the value of its tangible property and equipment, after liberal sums have been written off for depreciation. These assets have been acquired by the boat line out of its earnings and chiefly out of its joint rates with the rail lines.

Besides finding itself the owner of a boat line with property of the value mentioned, the salt company has received from the boat line since its incorporation cash dividends aggregating $105,000. Through the manipulation of the boat-line accounts it has also received an additional sum of $36,000 in cash, making a total cash return to the salt company of $141,000. In view of the liberal items for depreciation, this is a handsome income, even upon the assets of the company as stated on its books. It is a still more satisfactory return on its capital of $50,000, even if its outstanding stock may be considered as having a substantial basis as an original cash investment. It is altogether an extraordinary return upon the actual cash investment of $500. But this is not all. The boat line has charged each year to operating expenses large sums of money for warehousing, chartering of vessels, and the performance of so-called terminal services, such as docking, unloading, storage, reloading, recooperage, etc. But, except respect to chartered vessels, all these payments by the boat line made to the salt company that owns it. And during all

this time, it must not be forgotten, the boat line has moved practically nothing but the salt of its proprietary company or the salt of companies of which the proprietary company was the exclusive selling agent in this territory. The complainants allege that the sums paid by the boat line to the salt company on account of services of this character have aggregated during the past 10 years more than $1,200,000. This assertion is not verified of record. It definitely appears, however, that during the single year 1910 the boat line paid to the proprietary salt company for dockage, storage, reloading, etc., about $120,000. During the same year it paid to the salt company about $15,000 more for recoopering its own salt.

It is clear from this statement of facts that by turning its facilities over to an incorporated transportation company which handles substantially nothing but its own salt, the salt company has received extraordinary returns, which give it extraordinary advantages over its competitors. The situation resolves itself into another of the growing number of instances where a large industry, by the mere taking out of a charter under the loose laws of some state, gives to its private facilities the appearance of being a public carrier and then uses them as a device under the guise of which it may receive, and complaisant railroad companies may pay, rebates to the industry, and also as a club by means of which hesitating and reluctant lines may be forced into the same unlawful relation with the industry under the threat of a large traffic that may be lost by their refusal to meet its demands.

The International Salt Company of Illinois is now inactive. It was formerly a subsidiary of the International Salt Company, a New Jersey corporation, referred to on this and other records before the Commission as the salt trust, which was composed of a combination of eastern and western salt companies. In February, 1910, it was decided to separate the eastern and western properties. The country was divided into two parts, the markets west of the Alleghenies being taken by the Morton Salt Company, which was organized by Joy Morton & Company to acquire and hold the assets and trade of the International Salt Company of Illinois; the Morton Salt Company now dominates and practically controls the salt business in that territory. Joy Morton & Company also own the Michigan, Indiana & Illinois Line, which we have referred to as the boat line; and the record shows that the salt company and the boat line constitute one investment in the same general interest, and we have so considered them in stating the facts in the case.

The record shows an occasional eastbound movement of lumber and staves in which the salt company, as we understand the matter, is generally interested. It is also shown that the boat line carries occasional cargoes of grain to eastern lake ports. But it is expressly

admitted that its vessels take these cargoes as tramps and not as common carriers. The only attempt it makes to fulfill its functions as a common carrier is by publishing port-to-port rates on salt and by concurring with the rail lines in joint through lake-and-rail rates on that commodity. It has published no rates on any other commodity. Moreover, the local rates published by it are for salt in cargo lots only. The mere statement of these facts is itself convincing proof that the boat line is in reality nothing more than the private facility of the salt company.

It will be interesting for a moment to examine its rates. The local rate on salt to Chicago from Buffalo, as well as from ports of origin in Michigan, is 5½ cents per 100 pounds, limited, as heretofore stated, to salt moving in cargo lots. This rate applies both on salt in bulk and salt in packages. The rate from the same points to Milwaukee, Sheboygan, and Toledo is 4¾ cents per 100 pounds. The inconsistency of charging the same rate from Buffalo to Chicago as from Ludington to Chicago and the same rate from Ludington to Toledo as from Ludington to Milwaukee is apparent; the rate from Ludington to Chicago is higher than the rate from Buffalo to Milwaukee; and the rate from Port Huron to Toledo is the same as the rate from Buffalo to Milwaukee. The present adjustment of divisions is no less singular. Out of the joint rail and lake rates through Chicago and Milwaukee the boat line receives divisions varying from 3¼ to 5 cents per 100 pounds on salt in bulk originating at Michigan ports; on salt in barrels originating at those ports its division is uniformly 5 cents per 100 pounds or 15 cents a barrel. On salt moving from Buffalo through Milwaukee and Chicago and thence to inland rail points its divisions out of the joint rail and lake rates are grossly in excess of its own local rates to both points. The divisions vary from 8 cents to 11 cents per 100 pounds, the local rates to Milwaukee and Chicago being 4¾ and 5½ cents, respectively.

Formerly its local rate on salt from Buffalo to Chicago was 6 cents per 100 pounds, while the rate from Manistee and other Michigan ports was 4¾ cents. By increasing the rate from Michigan ports and reducing the rate from Buffalo, the boat line at this time, as heretofore stated, maintains the same rate to Chicago from all these ports of origin. This incongruous rate adjustment was made effective, as the complainants intimate, to avoid, by an ingenious device, the effect of our ruling that it is not permissible to substitute articles originating in one territory for similar articles originating elsewhere and taking a different rate. By publishing the same rate to Chicago from all the ports of origin the salt company is able to eliminate this ...ction when it desires a substitution of salt in transit. If this was ...se, and the adjustment suggests no other possible purpose,

the rates of the boat line have been so fixed as to respond directly to the interests of the salt company, and this affords a strong example of the manner in which an industry owning facilities to which it has given the form and appearance of being a common carrier may manipulate its rates to its own advantage. It may be well to say that in the proceeding entitled *In re Substitution of Tonnage at Transit Points*, 18 I. C. C., 280, gross irregularities and violations of law were disclosed in connection with the salt traffic of these companies. More recent examinations into the affairs of the boat line indicate continuing instances of improper transit practices.

On the argument counsel for the boat line explained that the attitude of his client was based on—

a sincere regard for what the law and the policy of the law now are, and not what either or both should be.

The situation is then defended upon the broad general proposition that the Michigan, Indiana & Illinois Line was organized as a common carrier and so holds itself out to the public. On the assumption that the record will be understood as showing that this is an accurate statement of the real purpose of the salt company in organizing its facilities into an incorporated company, and as showing also that the boat line does in fact hold itself out as a common carrier, it is contended that everything disclosed of record has been justified and legalized. All that is necessary, as we are told, completely to answer the issue tendered by the complainants, is to state that—

(a) This defendant has for 12 years filed and published tariffs according to law, thereby inviting shipments over its line; (b) it has, since its organization, advertised in the offical guide; (c) it has held itself out as willing and ready to carry certain commodities under the tariffs above mentioned; (d) it does no other business than carrying; (e) it is engaged in transportation in both the general sense and the sense as defined in section 1 of the act to regulate commerce; (f) it does not appear that anyone has been denied the use of its facilities and instrumentalities of commerce; (g) it has transported the commodity (which it has held itself out as willing to transport) for various and sundry manufacturers thereof and dealers therein.

Elsewhere it is said that the treasury of the boat line is entirely separate and distinct from the treasury of the salt company and that there is no commingling of the funds of the two organizations. Nevertheless, the general offices of the boat line are also the general offices of the salt company. It is also said that, like other common carriers, the boat line must have the necessary "instrumentalities and facilities of commerce." It has therefore provided itself with docks at Chicago and Milwaukee, with a suitable force of labor to discharge its obligation under its tariffs to unload, store, and reload cargoes of salt. But the warehouse and the docks and the labor comprising the facilities with which the boat line pretends to discharge these

public obligations that it claims to have assumed under its tariffs are the docks and the warehouse and the servants of the salt interests that own the boat line. Under these circumstances the publication by the boat line of rates on bulk salt in cargo lots and of joint rail-and-lake rates on salt in packages amounts to nothing more than a bald invitation to the competitors of the proprietary salt company to fully expose their affairs to it and to put their business into its hands. Under such conditions the contention that this boat line is a public carrier within the meaning of the act to regulate commerce is one with which we have little patience. That it could not properly be so regarded by this Commission and would not ordinarily be so used by shippers of salt in competition with the salt interests that own the boat line is manifest. Many difficult and important questions arise out of the ownership by industries of the facilities of transportation and in some such cases there is at least room for argument. We find no room for argument here or any occasion for doubting that the arrangement between this boat line and the defendant rail carriers is a gross violation of the act, both in its spirit and in its letter. In *Federal Sugar Refining Co.* v. *B. & O. R. R. Co.*, 20 I. C. C., 200, it appeared that the wharf or dock owned by a sugar refinery was operated by it as a receiving station for public carriers; we held that it was not a legal receiving station for the competitors of that refinery, and therefore, with respect to the sugar of the proprietary company, was a private facility. We expressed the same view with respect to the lighters of the refinery by which its own sugar was delivered across the river to the rail lines. This is a much more aggravated case of the same kind. We find upon the facts shown of record here that the boat line and its dock facilities are the private facilities of the Morton Salt Company and are not public facilities under the act.

As the boat line and the salt company are in form distinct corporations we are referred to *United States* v. *D. & H. Co.*, 213 U. S., 366, where the commodities clause was involved. The ruling there announced was modified in *United States* v. *L. V. R. R. Co.*, 220 U. S., 257. But that clause of the act is very different from the provisions of law upon which our conclusions here are based.

The language of the Elkins act is that it shall be unlawful to give or receive any rebate or concession with respect to the transportation of property—

whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs * * * or whereby any other advantage is given or discrimination practiced.

The same thought is no less clearly expressed in section 2 of the act to regulate commerce. In neither act is there any limitation of

the prohibition to some devices to accomplish the unlawful result, but the language comprehensively embraces all and any devices of whatever nature and form. Properly construed and bearing in mind the evils aimed at by the act there can be no doubt that this boat line, although incorporated and thus given a legal form and appearance, is a mere device by which grossly unlawful advantages are secured.

Another defendant is the Ludington Transportation Company, a boat line similar to the Michigan, Indiana & Illinois Line. It owns one small boat and was organized primarily for the purpose of transporting salt for the Ludington Salt Company, the selling agent in western territory for the Stearns Salt & Lumber Company of Ludington, Mich. The president of the boat line is also the president of the Stearns Salt & Lumber Company and of the Ludington Salt Company, and 80 per cent of the stock of the boat line is owned by the stockholders of the Stearns Salt & Lumber Company and the Ludington Salt Company. The boat line transports only the salt of the Ludington Salt Company and salt in which it has an interest. The only other commodity which it handles is lumber in which the Stearns Salt & Lumber Company is usually interested. It publishes rates on salt and lumber only. It receives the same divisions from the rail carriers as does the Michigan, Indiana & Illinois Line, except that no divisions are based on traffic from Buffalo. Salt from Buffalo, however, moves to Ludington, and from there is reshipped on the through rates out of which it receives divisions. The same general practice of paying the salt company for unloading and terminal and warehouse service governs in this case as does in the case of the Morton Salt Company. The boat line pays the salt company 1¾ cents per barrel for taking the salt from the hold of the vessel to the warehouse and storing it for 8 months, and 1½ cents per 100 pounds for loading it from the warehouse into the cars.

We find upon the facts shown of record that the boat and other facilities of the Ludington Transportation Company are the private facilities of the Stearns Salt & Lumber Company and do not handle its salt as a common carrier under the act to regulate commerce.

The belief may fairly be indulged that the Commission is not often misled in a matter of this kind; nevertheless in the proceeding entitled *In re the Transportation of Salt from Points in Michigan to Missouri River Points and Intermediate Localities*, 10 I. C. C., 148, the affairs of the Michigan, Indiana & Illinois Line and its relations to Joy Morton & Company and the Morton Salt Company were before us, and either because of a misunderstanding of the record or through the failure of the record to disclose all the facts, the Commission

arrived at a conclusion quite different to the one here announced. Nothing, however, in the present record affords any possible excuse for the conditions that are shown to exist and to have existed for some time. Just how far the rail lines may justly be charged with knowledge of the real character of the Michigan, Indiana & Illinois Line and of the Ludington Transportation Company, and how far they should be held responsible for the rebates paid to these salt companies in the form of divisions to their boat lines is not clear. However that may be, the further continuance of these relations can not be excused and will not be tolerated. We see no occasion at this time for entering an order, but it must be understood that unless the defendant boat lines and rail lines, and their respective officers and agents, at once desist from these unlawful practices we shall take steps to enforce respect by them for the law and full obedience to its provisions.

No. 4146.
STANDARD OIL COMPANY
v.
ILLINOIS TERMINAL RAILROAD COMPANY ET AL.

Submitted October 9, 1911. Decided March 4, 1912.

Fuel oil switched at St. Louis was not weighed and there was no tariff provision for estimated weights; *Held*, That charges collected, based on an arbitrary estimated weight of 7.4 pounds per gallon, were unreasonable to the extent that they exceeded estimated weights provided in tariffs governing the road haul to St. Louis. Reparation awarded.

H. R. McElroy and *Edgar Bogardus* for complainant.

J. C. Ryan for Illinois Terminal Railroad Company.

B. M. Flippin and *Henry G. Herbel* for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the oil business at Wood River, Ill. By petition, filed June 5, 1911, it is alleged that charges exacted by the defendants for switching at St. Louis, Mo., certain carload shipments of fuel oil, which originated at Wood River, Ill., were unjust and unreasonable. Reparation is asked.

Between January 25, 1910, and April 16, 1910, complainant shipped from Wood River, Ill., to St. Louis, Mo., via lines of the Chicago & Alton Railroad, Illinois Terminal Railroad, Litchfield & Madison Railway, Terminal Railroad Association of St. Louis, and Missouri Pacific Railway, 129 tank cars of fuel oil, paying charges thereon in the aggregate sum of $3,749.78 based on a combination rate of 4.5 cents per 100 pounds, composed of 2.5 cents from Wood River to St. Louis, plus a terminal switching charge of 2 cents by the Missouri

Pacific Railway, the component factors of the rate being applied on a varying basis of estimated weights as shown in the table below:

Routing.	Cars shipped.	Estimated weight for haul to St. Louis.		Estimated weight for switching in St. Louis.		Aggregate charges.
		Per gallon.	Aggregate weight at 2.5 cents per 100.	Per gallon.	Aggregate weight at 2 cents per 100.	
Illinois Terminal R. R.; Litchfield & Madison Ry.; Terminal R. R. Asso. of St. Louis; Missouri Pacific Ry.	45	6.4	2,706,179	7.4	3,129,008	$1,302.25
Do	81	6.6	5,040,435	7.4	5,649,182	2,390.06
Chicago & Alton R. R.; Terminal R. R. Asso. of St. Louis; Missouri Pacific Ry.	3	6.6	121,223	7.4	135,916	57.47
Total	129	....	7,867,837	....	8,914,106	3,749.78

The rate of 2.5 cents for the carriage of the shipments above set forth from Wood River to St. Louis is not in issue, the complainant's contention being that the charge of the Missouri Pacific for switching at St. Louis should have been at a rate of 1 cent per 100 pounds based on the estimated weight, aggregating 7,867,837 pounds, for the haul to St. Louis, instead of 2 cents on an arbitrary weight of 7.4 pounds per gallon, which aggregated 8,914,106 pounds, as charged.

The tariff governing the switching in question provided for a rate of 1 cent on noncompetitive traffic and 2 cents on competitive traffic moving between the tracks of the Terminal Railroad Association of St. Louis and the industries to which the shipments were consigned, and defined noncompetitive and competitive traffic as follows:

NONCOMPETITIVE TRAFFIC.—Where the industry is located on a road which does not itself, or in connection with other roads, form a practical route between the industry and the points of origin or destination, as the case may be, of the shipment.

COMPETITIVE TRAFFIC.—Where the industry is located on a road which itself, or in connection with other roads, forms a practical route between the industries and the point of origin or destination, as the case may be, of the shipment.

Shipments from Wood River to industries located on the Missouri Pacific at St. Louis are delivered to that line by one of the St. Louis terminal roads. The Missouri Pacific states that the word "roads" as used in the above definition does not include terminal roads; that, therefore, the shipments in question did not move via a practical route within the meaning of this definition; and that the proper charge should have been at the rate of 1 cent provided for noncompetitive traffic. This tariff provision does not restrict the use of the word "roads" to any particular class of roads; tariffs, as repeatedly held by the Commission, are to be construed according to their language, and not by the arbitrary practice or intention of a carrier.

Furthermore, judging from the number of shipments involved, it would appear that the routes used were practical ones.

The foregoing definitions of competitive and noncompetitive traffic are ambiguous and uncertain, and apparently place upon the billing clerk the difficult task of determining in each instance what does or does not constitute a practical route. It is expected that the tariff containing these indefinite descriptions will be reissued in such form as to define clearly these classes of traffic.

The shipments were not actually weighed by the Missouri Pacific Railway, nor did the tariff under which they moved provide for any estimated weight on fuel oil. Charges were based on estimated weight of 7.4 pounds per gallon, provided in the western classification, which, however, did not govern the movements. Effective January 1, 1911, the Missouri Pacific Railway published the following rule for estimating weights on petroleum products switched at St. Louis:

The weight and charges on shipments of petroleum and its products (exclusive of sewing-machine and cycle oil), classified as fifth class under head of petroleum in western classification No. 50, F. J. Hoffman's I. C. C. No. 8, supplements thereto or reissues thereof, when loaded in tank cars, are to be based on the full gallon capacity of tank cars at the estimated weights provided in classification or tariff governing the road haul.

Upon consideration of the facts of record we are of the opinion, and find, that the charges assessed for switching these shipments at St. Louis were unreasonable to the extent that they exceeded the amount that would have accrued at a rate of 2 cents per 100 pounds on a total weight of 7,867,837 pounds. We further find that complainant shipped 129 carloads of fuel oil weighing 7,867,837 pounds. as recited in the foregoing statement of facts, and paid switching charges thereon at St. Louis at the rate of 2 cents per 100 pounds on the weight of 8,914,106 pounds, herein found to have been unreasonable; that said complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid had the rate of 2 cents per 100 pounds been applied on the weight of 7,867,837 pounds, above found reasonable; and that it is therefore entitled to an award of reparation from The Missouri Pacific Railway in the sum of $209.25 with interest from April 29, 1910. An order will be entered in accordance with these conclusions.

No. 3677.

CURTIS BROTHERS & COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted July 3, 1911. Decided April 8, 1912.

The principal defendant, which performs the line haul on traffic to and from complainant's plant, formerly switched complainant's cars between its tracks and the plant without charge. The principal defendant was forced by its codefendant to discontinue this switching service, and the latter defendant thereupon established a switching charge of $3 per car between the principal defendants' tracks and complainant's plant; *Held*, That upon the facts appearing of record the switching charge is not shown to be unreasonable or discriminatory.

J. O. Bracken for complainant.

George D. Squires for Southern Pacific Company.

D. M. Swobe for McCloud River Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing sash, doors, and blinds, and has a factory near the town of Sisson, Cal. By petition, filed November 28, 1910, it alleges that its factory adjoins a spur track owned by defendant McCloud River Railroad Company; that for several years prior to October 5, 1910, the Southern Pacific Company, which receives the line haul of traffic to and from complainant's plant, performed free of charge the switching service involved in handling cars in and out from said plant over the spur track and a portion of the main line of the McCloud River Railroad Company; that on October 5, 1910, the McCloud River Railroad Company, by tariff filed with this Commission, established a charge of $3 per car for said switching service and entered upon the performance thereof; and that the Southern Pacific Company thereupon discontinued this service. The complaint is that the switching charge is unreasonable and discriminatory.

Complainant bases its case mainly upon the conclusion announced in *Associated Jobbers of Los Angeles* v. *A., T. & S. F. Ry. Co.*, 18 I. C. C., 310, to the effect that the carrier having the line haul should deliver the traffic so hauled without additional charge to industries located upon its tracks within its switching limits, but the facts of the case now before us do not bring it within the scope of that decision. In this case the Southern Pacific Company performs the line haul,

but it does not own or operate the track upon which complainant's factory is located. It did perform the switching service for complainant free of any charge above the rate for the line haul until it was compelled by the McCloud River Railroad Company to cease operating engines and cars over the tracks of that company. The Southern Pacific Company was required by the McCloud River Railroad Company to cease operating over its tracks at Sisson for the reason, as stated by the McCloud Company, that such operation was extremely hazardous to the property and the lives of the employees of both defendants.

The discontinuance of this service by the Southern Pacific Company and the establishment of a switching charge of $3 per car by the McCloud River Railroad Company had the effect of increasing *pro tanto* the rate from point of origin to destination, and this by tariff effective October 5, 1910. The hearing, however, was not conducted upon the assumption that the burden of proof to justify the increased charge was upon defendants. No briefs have been filed by the parties; the line rates of the Southern Pacific have not been increased; and the record throws no light upon the question whether we have before us a rate increase since January 1, 1910, within the meaning of the act as amended.

The record contains no evidence upon which could be based a finding as to the reasonableness of the $3 charge imposed by the McCloud River Railroad Company. By withdrawing from this switching service the Southern Pacific Company increases its net revenue out of the rates for the line haul by whatever the actual expense of the switching may have been; but as to the amount of such saving no conclusion can be drawn from the record. There is no allegation that defendants' line rates to and from Sisson are unreasonable and no evidence upon that point. Certainly the McCloud River Railroad Company is entitled to some compensation for the switching service which it performs; and, as stated, there is nothing of record to show that the present charge is excessive.

The testimony of the Southern Pacific Company is to the effect that it is its universal practice to absorb switching charges of connecting lines at points of origin or destination only upon competitive traffic, and our information gained from tariffs on file leads us to believe that this is more or less the general practice of all railroads throughout the country. There is, therefore, no ground for concluding that complainant is subjected to discrimination as compared with other shippers similarly situated. It follows that, upon the facts of record, neither of complainant's allegations respecting the $3 charge can be sustained, and the complaint must be dismissed. An order will be entered accordingly.

No. 4107.

MICHAEL COHEN & COMPANY

v.

MALLORY STEAMSHIP COMPANY ET AL.

Submitted July 24, 1911. Decided April 8, 1912.

Rate of 95 cents per 100 pounds on rough marble from New York, N. Y., to San Francisco, Cal., not found unreasonable. Complaint will be dismissed upon proof of refund of charges found to have been collected in excess of tariff rate.

Michael Cohen for complainant.

W. P. Levis for Mallory Steamship Company.

T. J. Norton and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation with place of business at New York, N. Y., and is engaged in the sale and shipment of stone, marble, and granite. By its petition, filed May 16, 1911, the reasonableness of defendants' rate on rough marble from New York City to San Francisco, Cal., is put in issue and reparation is asked.

On December 17, 1910, and January 12, 1911, the Mallory Steamship Company received from complainant at New York City thirteen blocks of rough marble for movement to San Francisco, Cal., via Galveston, Tex., and the lines of the Santa Fe system. The two shipments weighed in the aggregate 269,520 pounds, and freight charges were collected thereon in the sum of $2,695.20, at a rate of $1 per 100 pounds.

The bills of lading prepared by complainant described the shipments as rough stone upon which there was a rate of 55 cents per 100 pounds; but upon arrival of the shipments at destination they were inspected by the delivering carrier's agent and found to consist of rough marble. Thereupon the billing was corrected and charges were collected in the sum above stated. The record shows that in answer to an inquiry the general eastern freight agent of the Santa Fe system wrote to complainant on December 7, 1910, before the shipments were made, and quoted a rate of 55 cents per 100 pounds on rough stone in carload lots, no mention being made

in the letter as to the rate on rough marble. By reference to the tariff under which the shipments moved we find that in connection with the item naming the 55-cent rate on stone it is specifically provided that the rate is not applicable on marble. While complainant's witness, who arranged for the shipments and prepared the bills of lading, testified that he did not consult the tariff before shipment and that he did not know what the rate was on marble, it appears from his testimony that he did know that the rate of 55 cents only covered stone. Furthermore it was stated by counsel for one of the defendants at the hearing that when claim was later filed by complainant with the carriers for alleged overcharge on these shipments they were again described as stone.

Before passing upon the main issue raised by this complaint, it should be stated that the rate of $1 per 100 pounds applied on these shipments covers marble on which some labor has been performed, such as sawing, dressing, or hammering; and as these shipments consisted of rough quarried marble, the rate on which charges should have been based was the class-E rate of 95 cents per 100 pounds. There is therefore an overcharge on these shipments amounting to $134.76, which should be refunded to complainant without a formal order from the Commission.

Complainant's petition alleges that the charges exacted for the transportation of these shipments of marble were unreasonable to the extent that they exceeded the charges that would have accrued under a rate of 55 cents per 100 pounds, which was the rate on rough stone, and reparation in the sum of $1,212.84 is sought. The defendants deny that the rate is unreasonable. In its answer the Mallory Steamship Company avers that the value of marble greatly exceeds that of rough stone; that the distance from New York City to San Francisco, via Galveston, Tex., is 4,349 miles; that out of the $1 rate defendants have to pay marine insurance, rehandling charges at Galveston, and the California state toll; and that the expense incident to the handling to and from steamers and onto cars of blocks of such excessive weights as these is much greater than on ordinary traffic.

In support of its contention that the rate on rough marble should be the same as on rough stone, complainant submitted in evidence the fact that the various freight classifications provided for the same class ratings on marble as on stone and that commodity tariffs in some cases named the same rates on marble as on stone. Although complainant's witness while on the stand cited several instances in which shipments of stone were of greater value than the average shipment of marble, he did not attempt to show that marble as a general proposition is not more valuable than stone.

In behalf of defendants it was stated at the hearing that the only reason for maintaining the 55-cent commodity rate on stone is to meet the competition of the all-water routes operating via Cape Horn; and that the carriers purposely omitted marble from the application of the lower rate, on account of the greater value, and the consequent greater risk which they did not care to assume for the small earnings that would accrue under the 55-cent rate. It also appears from testimony of complainant's witness that there is active competition via the Horn, for he stated that thousands of tons of marble were moving from Venice and Leghorn, Italy, to the Pacific coast, which might be brought via New York if the transcontinental lines would make a rate thereon to meet the competition of the water lines.

We find the class-E rate of 95 cents to Pacific coast terminals applies not only from New York City via the Mallory line and through Galveston, but is a blanket rate applying from Missouri River points and from Galveston itself, and all points east thereof, except from "southeastern territory," which lies south of Ohio River and east of Mississippi River. From this latter territory no joint class rates are published to Pacific coast, but there is in effect a commodity rate of 95 cents per 100 pounds on rough quarried marble from Knoxville, Tenn., evidently established to place quarries in that vicinity on a parity with quarries in other parts of the country, from which the class-E rate of 95 cents is in effect. The class-E rate applicable on marble from New York City to Ogden, Utah, via Mallory line and Galveston, is 74 cents and the class-E rate from Ogden to San Francisco is 38½ cents. This is the lowest combination available, and it results in a rate 17½ cents higher than the joint class rate. The class-E rates applicable on rough marble from New York City via Mallory line and Galveston are: To Fort Worth, Tex., 49 cents; to Oklahoma City, Okla., 52 cents; and to El Paso, Tex., 54 cents. The all-rail class-E rate from Pittsburgh territory to El Paso, Tex., is 67 cents. In *Maricopa County Commercial Club* v. *S. F., P. & P. Ry. Co.*, 19 I. C. C., 257, the class-E all-rail rate prescribed by the Commission from Pittsburgh, Pa., to Phoenix, Ariz., was 86 cents. The class-E rates to San Francisco are: From Fort Worth, Tex., and Oklahoma City, Okla., 95 cents; from El Paso, Tex., 70 cents; and from Phoenix, Ariz., 79 cents.

To adopt complainant's view and order defendants to establish and maintain for the transportation
now applicable on stone, would
must meet the competition of t
in *Lindsay Bros.* v. *B. & O. R*
water competition may

and excuse for rates that are lower than would otherwise be lawful, the existence of such competition is not in itself a ground upon which a shipper may demand a lower rate. It is the privilege of a carrier, in its own interest, to meet such competition, but it is not the privilege of a shipper to demand less than normal rates because of the existence of a competition which the carrier in its own behalf does not choose to meet. It is also a well-settled principle that a water-compelled rate is not a measure of a normal all-rail rate.

We think that the rates applicable on marble to and from Fort Worth, El Paso, Oklahoma City, Phoenix, and Ogden, hereinbefore referred to, more nearly approach normal rates and may more properly be used in considering the reasonableness of the 95-cent rate. Without going into details and determining the revenue per ton per mile that accrues under these rates, it will be seen at a glance that the 95-cent rate from New York to San Francisco does not compare unfavorably with rates applying to and from the above western and southwestern cities, especially in view of traffic and transportation conditions that exist in the far west. The mere fact that the carriers have established a relatively low rate on stone to meet competition via the Horn is not in itself a sufficient ground upon which to declare the higher rate on marble unreasonable.

Upon the facts of record we do not find that the rate of 95 cents per 100 pounds applicable on rough quarried marble from New York, N. Y., to San Francisco, Cal., was or is unreasonable. It therefore follows that the complaint must be dismissed, and it will be so ordered upon proof of refund of $134.76, the amount which was collected in excess of published tariff rate.

No. 3600.

ELECTRIC MALTING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted June 7, 1911. Decided April 8, 1912.

Defendants' rates for transportation of barley and malt in carloads from Minneapolis, Minn., to California terminals are 55 and 65 cents per 100 pounds, respectively; *Held*, That the differential between the rates on malt and barley should not exceed 7 cents per 100 pounds.

James J. B. Orth for complainant.

T. J. Norton and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.

A. M. Fenton for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

W. F. Dickinson and *R. G. Brown* for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; and Chicago, Rock Island & El Paso Railway Company.

Hawkins & Franklin and *R. G. Brown* for El Paso & Southwestern Company.

E. N. Clark and *D. L. Meyers* for Denver & Rio Grande Railroad Company.

H. A. Scandrett and *L. T. Wilcox* for Southern Pacific Company and Union Pacific Railroad Company.

Warren Olney, jr., and *D. L. Meyers* for Western Pacific Railway Company.

C. L. Silvey and *A. P. Humburg* for Illinois Central Railroad Company.

J. D. Armstrong for Great Northern Railway Company.

Report of the Commission.

By the Commission:

Complainant is a corporation engaged in malting grain at Minneapolis, Minn. By petition, filed October 24, 1910, it alleges that defendants' rates for the transportation of malt from Minneapolis, Minn., to California terminals are unreasonable and unduly prejudicial in that such rates are higher than the rates on barley and

other coarse grains between said points. It is averred by complainant that a number of malting enterprises are located at Los Angeles and San Francisco; that these industries purchase their raw material—which is barley—at Minneapolis in competition with complainant, and ship the same to their plants at the barley rate, while to sell its product on the Pacific coast complainant must pay the higher malt rates; and that this adjustment affords undue advantage to California plants. Reparation is asked.

On carload shipments of malt from Minneapolis to Oakland, San Francisco, and Los Angeles, Cal., the rate is 65 cents per 100 pounds, while the rate on barley, prepared barley for seed, graded and blended barley, corn, rye, and oats is 55 cents per 100 pounds. On the eastbound movement from California terminals to Minneapolis the malt rate is 60 cents per 100 pounds.

Malt is manufactured by allowing barley to germinate and then drying it in kilns. The germination is produced by first soaking thoroughly cleaned barley and then placing it in drums supplied with air and water at the proper temperature. During the process the grain loses in weight and gains in bulk, but, superficially, retains the appearance of barley. From 100 pounds of barley 80 pounds of malt are obtained. Malt is worth on the average 50 per cent more than barley. At the time of the hearing barley was worth $2.10 per 100 pounds and malt $3.15 per 100 pounds. The average yearly crop of barley is approximately 180,000,000 bushels, of which about 70,000,000 bushels are used for malting purposes, while the remainder is used for feed. The laws and grain exchange inspection rules of Minnesota and various other states grade malt as feed barley. However, this fact has no bearing upon the value of malt as compared with barley that is graded as feed barley or ungraded. Malt is always sold by sample as malt, and the grading of it as feed barley is disregarded.

Complainant contends that malt is entitled to the same rates as seed barley, blended barley, purified barley, and oats and barley mixtures, which, although, in fact, barley products, are transported at the barley rate. Ordinarily barley and oats bring the same market price, but whenever barley is cheaper than oats the two grains are mixed and are sold and transported as oats. It appears that this mixture is of greater value than straight oats. Blended barley is a mixture of different grades of barley, resulting in a higher grade of barley than the lowest grade used in the mixture. Purified barley is yellow barley bleached white through a sulphuring process. The record does not disclose the nature of seed barley, but we assume that it is barley properly cleaned and used for seeding purposes. While it appears that the values of these products are somewhat higher

than some of the grades of barley used therein, no figures are given, and the record does not disclose that they exceed the value of the better grades of barley.

Defendants generally deny that the rate on malt is unreasonable or unduly prejudicial, and the record does not indicate that the rate is unreasonable *per se.* The higher rate on malt is justified on the ground that it is a manufactured product of barley; that its value is greater than barley, and this increases the carriers' liability; and that the minimum carload weight on malt is only 30,000 pounds as compared with a 50,000-pound minimum on barley.

Considerable testimony was offered by complainant showing that the percentage of claims for loss on shipments of malt is much less than on barley. Claims for loss of or damages to malt are extremely light. One witness testified that out of 662 cars shipped during a period of 16 months just preceding the hearing only one claim for damage had been made. Another testified that on shipments covering a period of 5 years claims had been made on about 3 per cent of the cars shipped.

Eighty per cent of the malt transported is shipped in sacks, and, while it appears that great care is exercised in seeing that the cars are well coopered, clean, and free from nails, only the ordinary grain car, coopered as all grain cars are, is required. Barley and other coarse grains are shipped in bulk, being loaded to the grain line placed in the car by the carrier, while malt, being shipped in sacks, may be loaded to the top of the car. Although the minimum carload weight for malt is 30,000 pounds, as against 50,000 pounds for barley, the average weight of shipments of malt per car is said to be 66,000 pounds, the same as barley. An examination of complainant's freight bills shows two shipments of 30,000 and 40,240 pounds, respectively, out of a total of 54 shipments. The balance showed weights ranging from 53,800 to 88,340 pounds. The average weight of all the shipments was 69,900 pounds.

Defendants justify the 60-cent rate on malt from California terminals to Minneapolis on the ground that the eastbound movement consists quite largely of empty cars and the lower rate was made in an endeavor to transport malt eastbound in some of the cars which might otherwise move empty.

The Commission has repeatedly held that carriers may make a reasonable differential between the rates on raw material and the article manufactured therefrom. In *Howard Mills Co.* v. *M. P. Ry. Co.*, 12 I. C. C., 258, it was held that the carriers might charge 7 cents more per 100 pounds on flour than on wheat transported from points in Kansas to points in California. In *Texas Brewing Co.* v. *A., T. & S. F. Ry. Co.*, 21 I. C. C., 171, the Commission allowed

the same differential between malt and barley from Minneapolis to Fort Worth, Tex., which had been approved in *Board of Railroad Commissioners* v. *A., T. & S. F. Ry. Co.*, 8 I. C. C., 304, as between flour and wheat from Kansas points to Texas points, namely, 5 cents per 100 pounds.

Upon consideration of the entire record we are of opinion, and find, that defendants' present rates for the transportation of malt in carloads from Minneapolis to Oakland, San Francisco, and Los Angeles are unduly prejudicial when compared with the rates on barley. Following the decision in *Texas Brewing Co.* v. *A., T. & S. F. Ry. Co.*, *supra*, and allowing the same differential between malt and barley as exists between flour and wheat between the same points, the rate on malt from Minneapolis to Oakland, San Francisco, and Los Angeles should not exceed the rate on barley by more than 7 cents per 100 pounds. We are not of opinion that substantial justice calls for refund by defendants upon past shipments, and therefore no reparation will be awarded. An order will be entered accordingly.

23 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 59.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF STAVES AND OTHER ARTICLES.

Submitted January 17, 1912. Decided March 5, 1912.

An increase in the rates on staves, hoops, and heading from various stations on the line of the St. Louis, Iron Mountain & Southern Railway in Arkansas and southern Missouri to certain points on the Atchafalaya River and Bayou Teche in Louisiana not shown by the defendants to have been justified, and increase held to be unreasonable.

George B. Webster for Ozark Cooperage & Lumber Company.

Henry G. Herbel and *C. C. P. Rausch* for St. Louis, Iron Mountain & Southern Railway Company and Missouri Pacific Railway Company.

C. W. Owen for Morgan's Louisiana & Texas Railroad & Steamship Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

An opportunity was twice given to the defendants in this proceeding to meet the burden of proof imposed upon them by the law to justify the increase in their rate of which complaint is here made. The record resulting from the first hearing was inconclusive, and on the motion of the Commission a further hearing was had and additional testimony adduced. An examination of the whole record, however, does not afford us grounds for sustaining the increased rate; in other words, the defendants have failed to justify the imposition of the higher rate which they published to become effective September 1, 1911, but which was suspended by order of the Commission as the result of a vigorous although informal protest by the Ozark Cooperage & Lumber Company.

The tariff in question proposed to increase to 24 cents per 100 pounds a joint commodity rate of 18 cents on staves, hoops, and heading in carloads from various stations on the line of the St. Louis, Iron Mountain & Southern Railway in Arkansas and southern Missouri to certain rail destinations and landings on the Atchafalaya River and Bayou Teche, in the sugar-producing section of Louisiana. The history of the rate adjustment is fully explained of record, but it will suffice for our purposes here to say that it appears that planta-

tions in Louisiana formerly secured their slack barrel material chiefly from manufacturers in the states of Indiana and Ohio on rates that were based on the New Orleans combination. In the course of time local dealers at New Orleans began to assemble staves, hoops, and heading manufactured in Arkansas and Louisiana and to distribute the sets to the sugar growers. They also paid the combination on New Orleans, but their rates were so much lower that the northern manufacturers were driven out of the Louisiana market. When the Ozark Cooperage & Lumber Company opened its mill at New Augusta it also shipped its barrel stock to New Orleans and distributed it from that point on the local rates. The opening of a large mill at Whitecastle four or five years ago and another at Placquemine, both points being in the sugar district of Louisiana and on the Mississippi River, so that those manufacturers were able to market a substantial part of their output by barges, forced the Ozark Cooperage Company to change its method of doing business. Apparently the only course open to it was the abandonment of its warehouse at New Orleans and the adoption of the plan of assembling staves, hoops, and heading into matched barrel sets for direct shipments to the plantations from its mill at New Augusta. It was not able, however, to make such shipments on the class rates then in effect, which apparently varied to the points here in controversy from 31 to 36 cents per 100 pounds. It therefore took the matter up with the carriers, with the result that the defendants published, on September 8, 1909, a special commodity rate of 24 cents per 100 pounds to landings on the Atchafalaya River and Bayou Teche. This rate, however, was at no time satisfactory to the complainants, as it was not low enough to enable them to share the business with their competitors; and the record makes it clear that few shipments were made during its existence. The matter was therefore brought again to the attention of the carriers, and the defendants, on April 30, 1910, reduced the commodity rate to 18 cents per 100 pounds, which fully met the complainants' views. This rate has remained in effect, over the route of the defendant lines, until the present time, although it was sought to increase it to 24 cents on August 26, 1911, in the tariff now under suspension by the Commission.

Both the Rock Island lines and the Frisco system also established the 24-cent rate in September, 1909, from originating points on their lines to destinations reached by Morgan's Louisiana & Texas. They declined, however, to meet the reduction of the Iron Mountain to 18 cents per 100 pounds. The explanation made of the failure of the Rock Island and Frisco to reduce their rate to 18 cents was that they preferred to yield the traffic to the Iron Mountain rather than to meet its lower rate. Those lines were not represented at the hearing

and that may have been their reason for continuing to maintain a rate of 24 cents. But it definitely appears that the 24-cent rate did not permit the traffic to move over any of these lines. The record shows that neither the Frisco nor the Rock Island had any traffic in slack barrel material to these points from the Arkansas mills, either before the reduction by the Iron Mountain to 18 cents or since.

The fact to which most prominence is given by the defendant, however, is that the originating points on the Iron Mountain from which the present rate of 18 cents and the proposed rate of 24 cents apply, as well as the stations on the Rock Island and Frisco from which the rate of 24 cents has been in effect, are situated in three general rate groups or territories, known, respectively, as the St. Louis group, Memphis group, and Little Rock-Fort Smith group. The class rates, which are referred to as the normal rates on forest products, from those groups to Franklin, La., a representative consuming point about 100 miles west of New Orleans, are 36 cents, 31 cents, and 28 cents, respectively. In other words, the contention of the defendants is that the rate of 18 cents and the rate of 24 cents apply as blanket rates from points from which normally the rates would be much higher. But the record contains many other rate comparisons in the light of which the present rate of 18 cents is not to be regarded as unduly low. It will be necessary to mention only one of these rates, applying from the same originating points on the Iron Mountain to destinations on the line of the Texas & Pacific Railroad, in another portion of the sugar-producing section of Louisiana. The rate here is 16 cents per 100 pounds, and previous to April 30, 1909, it was 18 cents, that being the date on which the rate now under discussion was reduced from 24 to 18 cents.

We find in the record many other facts bearing on the issue, including statements of earnings per ton per mile. But it will not be necessary to discuss the matter further. Upon the whole record we find that the defendants have not sustained the burden of proof and that the proposed rate of 24 cents per 100 pounds is unreasonable and excessive. An order will therefore be entered requiring the defendants for the usual period of two years to maintain a rate not exceeding 18 cents per 100 pounds.

No. 4298.

ASSOCIATION OF BITUMINOUS COAL OPERATORS OF CENTRAL PENNSYLVANIA

v.

PENNSYLVANIA RAILROAD COMPANY.

Submitted March 14, 1912. Decided May 6, 1912.

Complaint herein attacks defendant's present rate on bituminous coal from the Clearfield district of Pennsylvania to South Amboy, N. J. Upon the facts disclosed by the record; *Held*, That there has been no unjust discrimination as against the Clearfield operators practiced by the defendant carrier, nor does it appear that the rates attacked are unreasonable.

James Collins Jones for complainant.

Ellis Ames Ballard for Latrobe and Greensburg operators, interveners.

George Stuart Patterson for defendant.

Report of the Commission.

Lane, *Commissioner:*

The rate on bituminous coal from the Clearfield district of Pennsylvania to South Amboy, N. J., a distance of 345 miles, is $1.55 per gross ton. This rate is herein attacked as unreasonable. The complaint also alleges that the rate adjustment under which the Latrobe district, which adjoins the Clearfield district on the west, is given the same rate as the Clearfield district, and by which the Greensburg district, which lies immediately west of the Latrobe district, takes a rate of but 10 cents higher than the Clearfield district, is unduly preferential to such Latrobe and Greensburg districts, and unduly prejudicial to the Clearfield district. The complainant therefore demands that the defendant be required to incorporate the territory designated as the "Latrobe subdistrict" in the Greensburg rate zone. The effect of such action would be to restore the parity of rates which formerly existed from the mines of those zones to tidewater points. The Clearfield district is served by the Pennsylvania Railroad Company, the New York Central lines, and the Buffalo, Rochester & Pittsburgh Railway Company, the Latrobe and Greensburg districts are served only by the Pennsylvania Railroad Company. The mines in the Clearfield district are distant from South Amboy from 301 miles to 356 miles; those in the Latrobe district from 339 to 374 miles,

and in the Greensburg district from 372 to 387 miles. It is the complainant's prayer that the Clearfield district mines be given a rate per ton-mile to South Amboy not higher than that now extended from the Greensburg district to South Amboy.

The present rate from the Clearfield district to South Amboy is $1.55, or 4.5 mills per ton per mile, the distance being based upon the tonnage center, 345 miles. The rate from the Greensburg district to South Amboy is $1.65. The complainant's witnesses estimate that the tonnage center of the Greensburg district is 50 miles farther than that of the Clearfield district and therefore 395 miles from South Amboy. The defendant's witnesses, however, aver that the mines of Greensburg are from 372 to 387 miles distant from South Amboy, approximately 384 miles. The rate per ton-mile from Greensburg to South Amboy according to complainant's estimate is therefore 4.18 mills and this has been accepted throughout by all parties to this case as the existing ton-mile rate. The complainant's prayer is for a reduction of the Clearfield rate to $1.44 cents, based upon this estimated ton-mile rate. The actual rate per ton-mile for the average distance from Greensburg to South Amboy (384 miles) is 4.29 mills, and if reduced to this basis the Clearfield rate would be $1.48, 7 cents less than that now in effect. The evidence throughout, however, was addressed to a reduction of 11 cents in the Clearfield rate. The rates from the Clearfield district to South Amboy for the past 13 years have been as follows:

April 1—	
1899	$0.95
1900	1.30
1901	1.40
1903	1.50
1907	1.55

The rate has been higher since 1907 than ever before. Since 1900 the rate has increased 25 cents, and the reason for this is given by the defendant as follows:

The management of the Pennsylvania Railroad, Mr. A. J. Cassatt, when he came into control, found a condition where we were transporting coal to both Philadelphia and Amboy in competition with southern coals being transported over the Norfolk & Western and the Chesapeake & Ohio, at rates that were at such a low ebb that all the railroads engaged in the eastern bituminous coal traffic were in great danger of going into bankruptcy.

The result was that Mr. Cassatt, in connection with the New York Central interests, bought the control of the Norfolk & Western and the Chesapeake & Ohio, and also the Baltimore & Ohio. That was about 1899. And published openly in the tariffs the rates that then existed under the rebate system.

The reason they were published at that figure and not arbitrarily moved up materially at that time was because there were a great many contracts existing, notably steamer bunker contracts in New York, which ran for years, some of them, and because

it was thought it would be unwise to immediately make a very material advance in the rates, by reason of the general commercial upheaval that it would create among the manufacturers throughout all the east.

The competition had become at that time so extremely keen between the railroads that the northern lines, in order to protect their properties, were forced to go in and absolutely buy the control of these other railroads. Otherwise, as I said before, all the roads would have ultimately been bankrupt.

It appears that in 1899, when the open rates were first published and adhered to, the rate to Hampton Roads by the Chesapeake & Ohio on New River and Pocahontas coal was $1.10, in 1900 it was reduced to $1, in 1901 it was advanced to $1.15, in 1902 it was advanced to $1.25, in 1903 to $1.35, and in 1907 to $1.40.

The relation between the rates to tidewater from the various bituminous fields is shown in the following table:

Statement of carload rates, in cents per 2,240 pounds, on bituminous coal for transshipment into vessels.

Producing fields.	Railroad location.	New York tidewater points.	Rate.	Philadelphia* tidewater points.	Rate.	Baltimore tidewater points.	Rate.
Clearfield	Penna.	South Amboy	155	Greenwich Piers	125	Canton Piers	118
Latrobe	do	do	155	do	125	do	118
Greensburg	do	do	165	do	135	do	128
Cumberland-Piedmont.	B. & O.	Elizabethport coal piers Elizabethport, N. J.	155	Port Richmond coal piers or Jackson Street coal pier. Destination to be outside Delaware capes.	125	Curtis Bay coal pier or Baltimore coal pier destination to be outside the Chesapeake capes.	118
Austen-Newburg.	do	do	155	do	125	do	118
Meyersdale	do	do	155	do	125	do	118
Somerset	do	do	155	do	125	do	118
Fairmont	do	do	180	do	150	do	143
Georges Creek and Cumberland.	do	do	155	do	125	do	118
Beech Creek	N. Y. C.	Port Reading, N. J.	155	Port Richmond for points outside Delaware capes.	125		
Do	do	Elizabethport, N. J.	155				
New River	C. & O.	To Newport News, Va., when for points outside the Virginia capes.	140				
Pocahontas	N. & W.	To Lambert Point when for points outside the Virginia capes.	140				

The Clearfield coal competes at New York Harbor points, including South Amboy, with the coal from the Piedmont-Cumberland region of western Maryland and the Austen-Newburg, Meyersdale, and Somerset regions on the Baltimore & Ohio Railroad. These coals, it appears, fix the price of coals in the markets tributary to South Amboy, and the contention of the defendant is that a reduction in the rates from Clearfield would afford no relief if the same was followed by corresponding reductions in the rates of the western Maryland and the Baltimore & Ohio from the West Virginia regions to

New York Harbor. The defendant put on the stand H. M. Matthews, the general coal and coke agent of the Baltimore & Ohio Railroad, who testified that if there was a reduction of the Clearfield rate to South Amboy the Baltimore & Ohio would "no doubt make a corresponding reduction from its producing regions." When asked why this should be, he replied:

Our coal is competitive with that produced from the Pennsylvania. Our Meyersdale region joins with the Clearfield region. They come together at Johnstown. The mines are a very short distance apart. There is a certain relation between the rates to the different ports which I think would have to be preserved, and the reduction to New York would necessarily force a reduction to Philadelphia and Baltimore.

Being asked if the South Amboy rate were reduced to $1.45 for a 345-mile haul what rates ought to be reduced, he replied that he thought the rates to Baltimore, to Philadelphia, and to New York all three should be correspondingly reduced, saying:

I do not think it would be practicable to disturb the relation that exists between the different ports. I don't believe you could reduce South Amboy or New York Harbor without affecting the rates to Philadelphia or to Baltimore.

Q. What is the reason why a differential of 20 cents between Philadelphia and South Amboy on the Pennsylvania Railroad and a differential of 35 cents on your road between Philadelphia and New York could not be maintained just as well as the present differentials?

A. That would depend to some extent on the vessel freights. Of course the present adjustment primarily was made with relation to the vessel freights, Baltimore being 7 cents lower than Philadelphia, which is supposed to cover the additional towing expense down through Chesapeake Bay, and that follows all the way up to New York. The adjustments were made on that basis.

Q. Your Fairmont rate bears what relation to your Meyersdale-Austen-Newburg, upper Potomac rate?

A. The Fairmont rate is 25 cents a ton higher than Meyersdale and Cumberland-Piedmont.

Q. Would a reduction of the Meyersdale rate affect in any way your Fairmont rate?

A. Undoubtedly. We would have to reduce the rate from Fairmont.

It appears that an effort was made in 1910 to arbitrate the question of differentials obtaining between the West Virginia coal and the South Amboy coal, and that this was blocked by a refusal of some of the southern roads to participate in such proceeding.

The defendant also put upon the stand Mr. J. T. Hendricks, freight traffic manager of the Western Maryland road, which serves the Cumberland-Piedmont region. He said that the rate from the Cumberland-Piedmont region was the same as the Clearfield rate and the Baltimore & Ohio rate from the Meyersdale, Austen-Newburg, and Upper Potomac regions, and that if there was a reduction of the Clearfield rate to South Amboy his road would undoubtedly follow this reduction by making a similar one. Asked if there had been any meeting of the railroads to determine what they would do if the Commission gives the Clearfield shippers the relief asked for, he said that

the matter had been discussed frequently, and he felt he had the authority to make that statement for the corporation.

The coal-traffic manager of the Pennsylvania lines said that the reason why the Clearfield operators should not have the relief for which they are asking is that if they should get it it would profit nobody.

No evidence was given, either by the complainant or by the defendant, as to the reasonableness *per se* of any rates excepting by way of comparison, the defendant's sole justification for its rate being the inutility of a reduction, while the complainant's testimony may be summarized as follows: The price of coal is controlled, or largely influenced, by the cheapest coal in the market, and the cheapest coal in the markets reached by Clearfield coal through South Amboy is what is known as Western Maryland or Cumberland-Piedmont coal. The price of coal is driven down by this competition to a point where the Clearfield operator is now close to or below the cost of production. It is not practicable for the Clearfield operators to divert to other markets the shipments now made to South Amboy, nor is it possible to curtail the Clearfield production unless the operators went out of business. This condition has been growing steadily worse since 1904 or 1905 because of the low cost of production of coal in the Maryland and West Virginia fields. The complainant urges that in filing the rates of freight on bituminous coal heretofore, the carriers have always recognized the principle that the freight rate must be such that the coal operators can sell their coal in the available markets in competition with other coals reaching such markets. Prior to 1900 this was effected by a system of rebating. For the complainant it was affirmed that if the Clearfield district should be given the 4.18 mills per ton-mile rate it would also be the highest ton-mile rate to tidewater with the exception of the rates from the Cumberland and Meyersdale districts to Baltimore. Complainant's Exhibit No. 2, however, shows that higher rates would be in effect from Beech Creek to New York, Georges Creek to Philadelphia, and from Clearfield to both Philadelphia and Baltimore. The ton-mile rate from the average distance in the Greensburg district (4.29 mills) would also be higher.

The fundamental contention of the complainant is that the value of the service to the shipper is quite as much an element in determining the reasonableness of the rate as the cost of the service to the carrier. A shipper is entitled to have a rate that will enable him to reach his market and sell his product at a reasonable profit, provided, of course, the rate is reasonably remunerative to the carrier. If this proposition is not law it means that there is no real obligation on the part of a carrier to carry, because it can nullify the obligation by demanding a rate that means the shipper's destruction.

The Latrobe and Greensburg operators intervened in opposition to the petition of the complainant, showing that only in the most limited way do the coals produced by them enter into competition with Clearfield coals in the markets reached through New York harbor. Owing to their great dissimilarity to the coals of Clearfield, those of Greensburg and Latrobe find their chief employment as locomotive fuel, in the export trade or for rolling mills and similar furnace uses, for which the Clearfield product is, generally, not so useful. Also it was shown that a considerable part of the Latrobe and Greensburg product is converted and shipped as coke.

The defendant introduced statistical records of the tonnage carried from the Latrobe, Greensburg, and Clearfield districts from 1901 to 1911, which show that while the Clearfield-tidewater tonnage has increased from 5,680,840 tons in 1904 to 8,154,073 tons in 1910, or 43 per cent, the Latrobe-tidewater tonnage increased from about 78,310 tons in 1904 to 82,183 tons in 1910, or less than 5 per cent. The Greensburg increase has been less than 10 per cent. These statistical records also demonstrated that while the Clearfield tonnage through the South Amboy gateway has shown a considerable increase since the present rate schedule went into effect, the Latrobe and Greensburg tonnage has decreased. The following comparison of the tonnage of 1906, the year before the present schedule became effective, with that of 1910, the last complete statistical year, is an extract from defendant's Exhibit No. 4:

	Number of tons shipped during—	
	1906	1910
Clearfield to South Amboy	2,198,150	2,383,694
Latrobe to South Amboy	96,257	65,534
Greensburg to South Amboy	683,431	619,528
Clearfield to all other tidewater points	3,941,330	5,790,379
Latrobe to all other tidewater points	195,271	26,595
Greensburg to all other tidewater points	770,963	406,631

These figures, to the interveners, indicate that there has been fierce competition among the Clearfield operators themselves. If the Clearfield rate were reduced and no action followed on the part of other railroads, the interveners would not be injured, but if such an order were followed by the reduction in rates to tidewater by the Western Maryland, the Baltimore & Ohio, and Southern roads, the interveners feel that such reduction would be extended to the more westerly districts on such roads which produce coal in competition with the Latrobe and Greensburg coals, so that the final condition would be that the Clearfield operator would be in no better position than he was before and the Latrobe and Greensburg operators would

be driven from the eastern markets by competition from the south. The interveners' situation is presented in these words:

If the Clearfield rate is reduced 11 cents, it will cost the railroad close to $2,000,000 a year in revenue. The reduction will almost surely be met by competing lines and the complainants will be no better off. If such reduction by the Baltimore & Ohio and Western Maryland should reach the Fairmont district, it would practically deprive the Latrobe and Greensburg operators of the small part they now have in the eastern trade through tidewater points.

It is clearly beyond the power of the Commission to reduce the Clearfield rate upon the ground urged by complainant. It may well be that in times past rates from this and from other fields have been adjusted with relation to the cost of mining coal and that the carriers undertook to make a rate upon which all producers would be brought into competition at common markets and rates so adjusted as to leave to the coal operator a reasonable profit upon his investment. Those rates would fluctuate not with respect to the cost of carriage nor to the value of the service as such, but solely with respect to the needs or advantages of the shippers. Upon the shipper favorably situated in location, and having a thick vein of coal at a slight depth and resulting cheap cost of operation, a higher rate would be imposed than upon his neighbor who might suffer under the disadvantage of a high wage scale and a thin vein. It has been repeatedly said by the Commission that it was not our function, nor that of the carriers, to equalize economic conditions. In this case it fairly appears that the profits made by the Clearfield operators upon tidewater coal are slight, and that if rates should be made so as to sustain an industry which because of intense competition within itself, or because of local disadvantages, yields but a slight profit, the present rate should be reduced. But we do not understand the law as permitting us to fix a reasonable rate solely upon this ground.

It is to be remembered that no showing has been made as to the reasonableness of the rates themselves. We would not hesitate to reduce these rates because of the threat of a reduction from competing fields by other carriers if unreasonableness were established and if the case had been presented upon the ground of a discrimination between competing fields upon the line of the carrier defendant. From the figures above given it is manifest that the competition of the Greensburg district is almost negligible. The complainant's own witnesses fairly agree that the producing territory which makes the price at tidewater is not reached by the Pennsylvania Railroad and that the coal coming from the Greensburg district to tidewater plays but little, if any, part in the fixing of the low price which the Clearfield operators are compelled to meet. They wish now by a reduction in a rate to take from the railroad company 11 cents a ton, which

will give them a profit upon their coal, and to do this without showing that the railroad whose rates they attack is responsible either for the adjustment which exists between the Clearfield rates and the West Virginia rates, or that it is imposing an unreasonable charge for the Clearfield service. We can not find that there has been undue discrimination as against the Clearfield operators practiced by the defendant carrier, nor upon the record does it appear that the rates attacked are unreasonable. For these reasons the complaint will be dismissed.

No. 3131.

ALFRED JOUANNET

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted January 12, 1912. Decided May 6, 1912.

The carload rate of 42 cents and less-than-carload rate of 46 cents on vegetables, n. o. s., from Charleston, S. C., to New York City now in effect in place of the any-quantity rate of 45 cents in effect when this complaint was filed, for packages holding 1½ bushels, not found to be unreasonable.

John Waring Simons for complainant.

Ed Baxter and *R. Walton Moore* for Atlantic Coast Line Railroad Company and Richmond, Fredericksburg & Potomac Railroad Company.

George Stuart Patterson for Pennsylvania Railroad Company and Philadelphia, Baltimore & Washington Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

The rate on vegetables, n. o. s., from Charleston, in the state of South Carolina, to New York City, in standard crates measuring 30 by 16 by 9 inches and holding 1½ bushels, was, at the time this complaint was filed, 45 cents. The petitioner is a producer of lettuce, which in the tariffs of the defendants is included under the head of vegetables, n. o. s. It is understood that his shipments are ordinarily made in packages holding 1½ bushels and that his complaint is directed

more particularly to the 45-cent rate; but the defendants also published a rate of 30 cents on bushel packages and that rate, as applied to lettuce, is also here considered, although it is not altogether clear that the complainant uses it.

In *Voorhees* v. *A. C. L. R. R. Co.*, 16 I. C. C., 45, a 48-cent rate on lettuce to New York City from St. Andrews, a point 23 miles from Charleston, was found not to be unreasonable. The 45-cent rate from Charleston is there referred to, but not being under attack was not specifically involved in the order entered. The case was decided April 12, 1909. Vegetable rates from points in the Charleston district were again before us in February, 1911, in *National League of Commission Merchants* v. *A. C. L. R. R. Co.*, 20 I. C. C., 132, and in *Truck Growers' Asso. of Charleston District* v. *A. C. L. R. R. Co.*, 20 I. C. C., 190. In the latter proceeding we held that an any-quantity rate of 30 cents on bushel packages of vegetables n. o. s. from Charleston to New York City was not unreasonable.

In the absence of any showing of a change in conditions that would justify or require different conclusions at this time it is clear that those cases must control our disposition of this complaint. Certainly if a rate of 48 cents on packages containing 1½ bushels of vegetables is a reasonable rate from St. Andrews, a 45-cent rate from Charleston for such a package can not be regarded as unreasonable. Nor by comparison is there any ground for regarding a 30-cent rate for a bushel package as unreasonable for the transportation of vegetables from Charleston to New York City.

When the complaints in the two cases last cited were filed, the rates in effect were any-quantity rates. While the cases were pending and before they were disposed of, those rates were withdrawn and carload and less-than-carload rates were substituted. At this time, therefore, the complainant, in place of the any-quantity rate of 45 cents on vegetables, n. o. s., in standard packages holding 1½ bushels, has the advantage of a carload rate of 42 cents and a less-than-carload rate of 46 cents from Charleston to New York City. This change is referred to in *Truck Growers' Asso. of Charleston District* v. *A. C. L. R. R. Co.*, *supra*, and it was suggested that the matter might be brought to our attention by supplemental proceedings should the new adjustment prove to be unsatisfactory. No complaint has since been made, and we may fairly infer that the substitution of carload and less-than-carload rates for the previous any-quantity rates has not worked to the disadvantage of the truck growers and shippers in the Charleston district. The new rates are lower than the any-quantity rates which the Commission in *Voorhees* v. *A. C. L. R. R. Co.*, *supra*, held not to be unreasonable. While early and late in the shipping season less-than-carload rates are used, the shipments are light; ordinarily the heavy movement of produce from this district

is in carload quantities. There can be no doubt, therefore, taking the shipping season as a whole, that the increase of 1 cent in the less-than-carload rate is more than offset by the reduction of 3 cents in the carload rate.

Practically no record was made by the complainant in support of his demand for reduced rates. Reference is made to a rate of 43 cents on vegetables, n. o. s., from Jacksonville to New York City, but the complainant overlooks the fact, clearly explained in *Voorhees* v. *A. C. L. R. R. Co.*, *supra*, and dealt with in detail and at length in *Florida Fruit & Vegetable Shippers' Protective Asso.* v. *A. C. L. R. R. Co.*, 14 I. C. C., 476; 17 I. C. C., 552; and 22 I. C. C., 11, that the rate from Jacksonville is a basing rate in the nature of a proportional rate and is used only in connection with a gathering rate to Jacksonville. When the charges from the Charleston producing district are compared with the full charges from producing points in Florida, the Charleston rates do not impress us as being at all unfavorable. Moreover, the circumstances and conditions surrounding the movement from Jacksonville differ materially from the circumstances and conditions under which vegetables, n. o. s., move from Charleston to New York City.

It appears in this case that a 30-cent rate on vegetables, n. o. s., in 1½-bushel packages from Charleston to New York City was in effect from August 27, 1908, to February 4, 1909. This is the only suggestive fact disclosed by the record. But this rate was fully considered in *Voorhees* v. *A. C. L. R. R. Co.*, *supra*, and need not again be considered here.

Apparently some overcharges and undercharges are shown of record which we assume will be adjusted on the basis of the legally published rates without our intervention; but in case no agreement can be reached the matter may be brought back to us.

The complaint must be dismissed and such an order will be entered.

No. 4597.

BRUNSWICK-BALKE-COLLENDER COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted April 8, 1912. Decided May 6, 1912.

Western classification rule providing for minimum charge on 5,000 pounds at first-class rate upon an article too large to be loaded through the side door or too long to be loaded through the end window of a 36-foot box or stock car found to be unreasonable and unjustly discriminatory. Rule providing that when articles are loaded on open cars on account of being too large or too long to be loaded through the side door of a closed car shall be charged a minimum of 5,000 pounds at the first-class rate, prescribed.

James J. Mullin for complainant.

R. C. Fyfe for defendants.

F. C. Dillard, *H. A. Scandrett*, and *L. T. Wilcox* for Union Pacific Railroad Company; Southern Pacific Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Louisiana Western Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; and Texas & New Orleans Railroad Company.

Fred G. Wright and *C. C. P. Rausch* for Missouri Pacific Railway Company; Texas & Pacific Railway Company; International & Great Northern Railway Company; and Denver & Rio Grande Railroad Company.

Report of the Commission.

Clark, *Commissioner:*

Complainant corporation, with principal offices at Chicago, Ill., in petition against all of the carriers parties to the western classification, attacks the classification rule—

> An article too large to be loaded through the side door of a 36-foot box or stock car, or too long to be loaded through the end window thereof, shall (unless otherwise specified in the classification) be charged at actual weight and class rate, provided that in no case shall the charge for the entire shipment be less than 5,000 pounds at first-class rate—

as unreasonable and discriminatory.

The present rules of the official and southern classifications are as follows:

OFFICIAL.

Articles too bulky to be loaded in box cars:

(B) Unless otherwise specified in the classification, when articles are loaded on a flat or gondola car on account of their being too bulky to be loaded in a box car through the side door thereof, they shall be charged at actual weight and class rate for each article, provided that in no case shall the charge for each article be less than 4,000 pounds at first-class rate.

Articles too long to be loaded in box cars:

(C) Unless otherwise specified in the classification, when articles are loaded on a flat or gondola car on account of their being too long to be loaded in a box car through the side door thereof, they shall be charged at actual weight and class rate for each shipment for one consignee, provided that in no case shall the charge for the same be less than 4,000 pounds at first-class rate.

SOUTHERN.

Rule 26 (b) When articles are loaded on an open car on account of being too long or too bulky to be loaded through the side door of a box car, they shall be charged at the actual weight and class rate for each article; provided that in no case shall the charge for each shipment for one consignee be less than 4,000 pounds at first-class rate.

Complainant is a manufacturer of billiard and pool tables, bar fixtures, bowling alleys, refrigerators, etc. Its requests made to the western classification committee to modify the rule were not complied with. It is alleged that the rule works a hardship against shippers of light and bulky articles, not alone in the amount of charges assessed, but in the inability to profitably sell articles such as counter tops, mirror cornices, partitions, screens, sections of refrigerators and cooling room material which can not be loaded through the side door or end window of a 36-foot box or stock car. Complainant submits the following exhibit:

List of outfits which include counter and cornices shipped from March 1, 1911, to March 1, 1912.

		Pounds.
98 12-foot outfits, weight	each	2,140
119 14-foot outfits, weight	do	2,435
146 16-foot outfits, weight	do	2,705
265 18-foot outfits, weight	do	2,875
572 20-foot outfits, weight	do	3,095

Shipments which come under rule 17-B, western classification No. 50.

		Pounds.
530 24-foot outfits, weight	each	3,470
286 30-foot outfits, weight	do	4,450

Seventy-five per cent of all outfits were shipped in less carload quantities: 25 per cent were shipped in carload quantities. These figures apply on stock ds only and do not include special work of any kind. Stock goods shipped ranches are invariably reshipped, or distributed, in less carload quantities.

Ten counter tops, 24 feet in length, were shipped individually during the period referred to. Weight of each, 560 pounds.

Twelve counter tops, 30 feet in length, were shipped individually during the period referred to. Weight, 650 pounds each.

Correct weight of No. 78 coolers, 2,500 pounds. Number shipped during the period referred to, six.

Special equipment is not requested for the loading of articles too long to be loaded in a 36-foot car. The carriers suit their convenience in such instances, noting on the receipt for the article left at the freight station "Subject to delay on account of length." It was testified that notwithstanding the fact that a closed car was available into which the article could be loaded the penalty would nevertheless be inflicted if upon inspection the article was found to be "too long to be loaded through the side door of the ordinary 36-foot box car." An article over 21 feet in length can not be loaded through the side door of such a car, the side door of which is generally 6 feet wide and 7 feet 6 inches high. In instances where an article is too long or too wide to be loaded through the side door of any box car, complainant is willing that the rule shall apply.

Generally speaking, the rule results injuriously to complainant where the articles are shipped individually. If complainant has an outfit which weighs as much as from 6,000 to 10,000 pounds it orders a furniture car and pays on the basis of the minimum carload. Upon the hearing the complaint as to the particular shipments of complainant was substantially narrowed.

It was the intention of the carriers to have a joint meeting of the three chairmen of the classification committees draft a rule and submit it to the Commission, but the meeting could not be arranged previous to the filing of this complaint.

Of a total of 969,965 box cars in the United States, 944,832 are 40 feet and under in length; that is, but 2.59 per cent of them are over 40 feet in length.

Among the articles to which the rule applies are iron and steel articles, telegraph poles and long timbers, ladders, boats, iron and steel cornices, airship frames, smokestacks, theatrical scenery, and many others.

Defendants suggest that the rule be amended to read:

An article too large to be loaded through the side door of a box or stock car 40 feet long by 8 feet 6 inches wide and 8 feet high, or too long to be loaded through the side door, or end window (top or bottom), of a box or stock car 40 feet long 8 feet 6 inches wide and 8 feet high, shall, unless otherwise specified in the classification, be charged at actual weight and class rate, provided that in no case shall the charge for the entire shipment be less than 5,000 pounds at first-class rate.

The dimensions given are those of the standard box car adopted by the western lines.

The words "top or bottom" were put in to avoid controversy as to which is the window, it being the contention of some railroad agents that the lower door, especially in stock cars, is not a window. Defendants take the position that the official and southern classification rules are apt to be discriminatory in that where the carrier has a car available into which a long or bulky article can be loaded the actual weight and proper rate applies, while another shipment identical with that transported in the box car would, on account of the carrier to which it is offered not having an available box car and loading it on an open car, be subject to the rule. But this disregards the fact that the article is loaded on an open car because its size will not permit loading in a box car.

As they are in great demand there is always a shortage of extra large furniture or automobile cars. Merchandise usually moves in cars not over 40 feet in length; automobiles, furniture, and vehicles in the larger cars. It may be that a car in excess of 40 feet in length would be available at a large shipping center but not at a smaller town. The average merchandise loading is from 12,000 to 16,000 pounds, but many lines run cars through loaded with merchandise not exceeding 6,000 pounds in weight. The loading of long articles, like bar counters, with other merchandise suggests some difficulties. These difficulties are, however, but incidents of the business of transportation.

In *Merchants & Manufacturers Asso.* v. *A. C. L. R. R.*, 22 I. C. C., 467, a résumé of the cases on rules of this character is given:

There has been a general acceptance by the Commission of the principle that the rate in such cases should be sufficient to give the carrier a fair return for the use of the car, but the conditions under which this return is exacted by the carriers have been subject to criticism. This question has come before the Commission in six cases, and in four of these it has been held that the rule should not be applied when the shipment is carried in a box car. *Bennett* v. *M., St. P. & S. S. M. Ry.*, 15 I. C. C., 301; *Brunswick-Balke-Collender Co.* v. *C., M. & St. P. Ry.*, 18 I. C. C., 165; *Knox* v. *W. R. R.*, 18 I. C. C., 185; *Houston Structural Steel Co.* v. *W. R. R.*, 18 I. C. C., 208. In another case the minimum weight prescribed was found to be unreasonable, but the effect of the decision was expressly limited to the particular commodity involved. *Indianapolis Freight Bureau* v. *C., C., C. & St. L. Ry.*, 15 I. C. C., 370. The sixth case held that the rule should not apply to shipments that can be loaded through the side door of a box car not less than 40 feet 6 inches in length. *Jones* v. *S. Ry.*, 18 I. C. C., 150.

* * * * * * *

The principle laid down by the Commission in the cases heretofore decided is that these long and bulky articles should be transported in box cars in every case where it is possible to do so, and that when so transported they shall be ...ed at the regular rates for less-than-carload shipments. When the ship... ...olely because of its length or bulk is actually transported on an open ... rule applying a higher rate and minimum may be enforced.

The carriers argue that they should not be compelled to withdraw from the furniture, automobile, and vehicle trade, cars which were especially constructed for those services and put them in a service which returns a much smaller revenue and materially adds to the cost of hauling, without some increase in their charges for such service.

All of the cases which we have heretofore considered have been in connection with one or more shipments on which reparation was the important feature. This case involves the rule for all western classification carriers. While defendants argue that the evidence in the case is particularly as to counter tops, and that any order made by the Commission should have reference only to that commodity, they are willing to amend the rule as previously indicated and make it applicable to all commodities of a similar nature. The reasonableness of the rule is challenged and the question is whether it is reasonable to limit the rule to a 40-foot car (which is now the standard as was the 36-foot car when the rule was established) or to make it applicable only in those instances where an article is transported upon an open car because it can not be loaded through the side door of a closed car.

The proposed rule would not be as fair as the present official and southern classification rules which are positive, specific, and affirmative as to when the first-class rate and minimum weight will apply. The rule of the western classification is, and the proposed rule would be, indefinite because it appears to assume that it applies only when all the dimensions of the article except length prevents loading through the side door, and only length is considered in reference to the end window, although as a matter of fact the size of the end window may be such as not to permit the ingress of the article notwithstanding the car is long enough to contain it.

The fundamental justification for the rule is the transportation of an article on an open car. Notwithstanding the comparatively limited number of cars exceeding 40 feet in length, the fact that other classifications, where the standard car is certainly not larger than in western classification territory, provide that the rule has applicability only when an article is transported on an open car is convincing that it would not be unfair or improper to require the same rule in western classification territory. Under such a rule no discrimination could result.

We are of the opinion that limiting the application of the rule to a car of a specific length would be productive of greater hardship than to eliminate reference to length of car. Leaving out of consideration the important instances of shipments from or to western classification territory from or to southern or official classification

territories in which the differences in the rules would almost inevitably be the cause of further complaints, it is seen that the inspection now necessary would largely be eliminated. A rule such as is now in effect in classification territories other than the western does not contemplate or require the withdrawal of large cars adapted to a special service, but where a shipper awaits the convenience of the carrier or a car of requisite size is available, we consider it unreasonable to assess a charge greater than that properly applicable on a less-than-carload shipment at actual weight. We are also of the opinion and find that the rule is unreasonable and unjustly discriminatory and that it should be amended so as to substantially accord with that now in effect in official classification territory and hereinbefore quoted, except as to the minimum weight, which should not exceed 5,000 pounds.

Such an order will be issued.

No. 4017.

RENO GROCERY COMPANY

v.

SOUTHERN PACIFIC COMPANY.

Submitted February 5, 1912. Decided May 7, 1912.

The joint rate under which this shipment moved not having been attacked, and the proper parties defendant not having been joined, the complaint must be dismissed.

William P. Seeds for complainant.

H. A. Scandrett and *C. W. Durbrow* for defendant.

Report of the Commission.

Lane, *Commissioner:*

The complainant, a corporation engaged in the wholesale purchase and sale of groceries at Reno, Nev., in its petition, filed April 10, 1911, alleges that the division received by defendant of the joint rate on sirup from St. Paul, Minn., to Reno, Nev., moving January 28, 1911, was unjust and unreasonable. Reparation is asked.

On January 28, 1911, one carload of sirup, weighing 38,500 pounds, was shipped from St. Paul to the complainant at Reno. Charges

were assessed and paid based on a rate of $1.18 per 100 pounds, equivalent to the terminal rate of 75 cents per 100 pounds to Sacramento, Cal., plus the rate of 43 cents per 100 pounds for transportation from Sacramento to Reno. Complainant alleges that the defendant received out of this rate of $1.18 its proportion of the terminal rate of 75 cents, together with the entire back-haul rate of 43 cents. Reparation is asked based on the back-haul charge. This shipment was received by the defendant carrier at Ogden, Utah, and transported from that point to Reno. Between St. Paul and Ogden the movement was over the lines of other carriers, who are not made parties defendant in this proceeding and whose identity is not disclosed.

The rate of $1.18 per 100 pounds was, at the time the shipment moved, a joint rate established by the participating carriers and published in a tariff in which all of these carriers joined. This through rate is attacked in the pleadings only by implication; if the purpose was to attack this rate, all of the participating carriers should have been joined as parties defendant. What is actually attacked in the petition is a part of the division of the joint rate received by the defendant. The division of a joint rate is a matter for agreement among the participating carriers, and is not subject to review by the Commission upon complaint of a shipper. It may, under the discretion of the Commission, be considered as evidence bearing upon the reasonableness of the rate. Under the circumstances there is either a nonjoinder of the proper parties defendant or else the issue raised is without the jurisdiction of the Commission. The complaint must therefore be dismissed.

No. 3873.

R. R. BLACK

v.

GREAT NORTHERN RAILWAY COMPANY

Submitted August 16, 1911. Decided May 5, 1912.

Rate of 46 cents per 100 pounds for the transportation of bulk corn in carloads from Sioux City, Iowa, to Hinsdale, Mont., found to be unjust and unreasonable so far as it exceeds 36 cents per 100 pounds. Reparation awarded.

J. A. Poore, on behalf of Montana Railway Commission, for complainant.

Veazey & Veazey and *J. D. Armstrong* for Great Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant resides in the vicinity of Hinsdale, Mont. By petition, filed February 21, 1911, he alleges that he was charged an unreasonable rate for the transportation of a carload of bulk corn from Sioux City, Iowa, to Hindsale, Mont., and asks reparation.

The carload in question was shipped from Sioux City on December 15, 1910. Upon arrival at destination charges were collected in the sum of $132, at a rate of 30 cents per 100 pounds for 44,000 pounds. Subsequently complainant paid a supplemental freight bill for $68.56, based upon a rate of 46 cents per 100 pounds and 43,600 pounds, thus making the total charges collected $200.56.

The rate of 46 cents is assailed as unreasonable so far as it exceeds the eastbound rate of 30 cents contemporaneously in effect between the same points, and by comparison with other rates maintained by defendant and other carriers in the same section of country on the same commodity for like distances.

Complainant sets forth that the distance from Sioux City to Hinsdale is 950 miles, and the rate of 46 cents pays defendant 9.68 mills per ton per mile for that distance; that in the reverse direction the ra[illegible] 30 cents, or 6.31 mills per ton per mile; that from Sioux City [illegible]n, N. Dak., and from Sioux City and St. Paul, Minn., [illegible], Mont., the Great Northern's rates are, respectively, [illegible]10 cents, and the rates per ton per mile, 6.50, 6.40, [illegible]ively. From Sioux City to Portal, N. Dak., the [illegible]nd there is a joint rate of the Chicago, Milwaukee

& St. Paul Railway and Minneapolis, St. Paul & Sault Ste. Marie Railway of 24½ cents or 6.78 mills per ton per mile. It was stated upon the hearing that using an average haul of 244 miles the average rate per ton per mile of the Great Northern including both carload and less-than-carload freight, for the year ended June 30, 1910, was 8.22 mills. On this per-ton-per-mile basis the rate on corn, Sioux City to Hinsdale, would be 38 cents, and defendant offered to establish such a rate on condition that it be relieved of the payment of reparation in this case.

While the record contains nothing convincing to such effect, it is suggested that the purpose of the lower eastbound rate was to enable the shippers in the west to compete in the terminal markets such as Sioux City with grain from nearby points. No such competition is shown westbound and it appears, at least as to the Great Northern, that little if any corn has moved in that direction. The difference in expense of operation due to grades and conditions of transportation are not a material factor as between the eastbound and westbound hauls.

Rates on corn for one-line hauls and hauls over two or more lines in this section and in the direction of this movement, figured from the examples herein cited and others, yield to the carriers per-ton-per-mile earnings ranging from 5.67 mills to 6.63 mills.

Upon the record we are of the opinion and so find that the rate of 46 cents was unreasonable to the extent that it exceeded 38 cents and the carrier will be required to maintain for the future a rate not in excess of that amount.

We further find that complainant made the shipment in accordance with the above statement of facts and paid charges thereon at the rate herein found to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate above found reasonable; and that it is therefore entitled to an award of reparation in the sum of $34.88, with interest from February 1, 1911. An order will be entered accordingly.

INVESTIGATION AND SUSPENSION DOCKET NOS. 65, 65–A, AND 65–B.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF COTTON AND COTTON LINTERS.

Submitted April 18, 1912. Decided May 6, 1912.

Rates on cotton from Texas producing points are and for some time have been the same to New Orleans and to Texas ports. Upon complaint to the Texas commission that this traffic was being diverted from Texas ports to New Orleans, the Texas commission proposed to reduce the rates to the Texas ports if the alleged discrimination were not removed. The carriers thereupon filed increased rates to New Orleans, which, upon complaint from the New Orleans Board of Trade, were suspended by us; *Held*, That rates from Texas points to Texas ports for export are subject to the federal act and under the jurisdiction of this Commission, and that therefore, in the absence of order of this Commission to the contrary, the carriers have a right to maintain parity of rates from Texas producing points to New Orleans and to Texas ports if they choose to do so; *Held, further*, That the distance and service to New Orleans being substantially greater than to the Texas ports, and the rates to the Texas ports not being alleged or shown to be unreasonable, the carriers have justified the proposed increased rates to New Orleans. Orders of suspension vacated.

Geo. H. Terriberry, *J. Blanc Monroe*, *Monte M. Lemann*, and *John A. Smith* for New Orleans Cotton Exchange.

H. H. Haines for Galveston Commercial Association.

J. L. West for Missouri, Kansas & Texas Railway Company of Texas.

F. C. Dillard, *J. R. Christian*, and *C. W. Owen* for Galveston, Harrisburg & San Antonio Railway; Houston & Texas Central Railroad Company; Houston East & West Texas Railway Company; Texas & New Orleans Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Louisiana Western Railroad Company; and Houston & Shreveport Railroad Company.

J. S. Hershey, *Robert Dunlap*, and *James L. Coleman* for Gulf, Colorado & Santa Fe Railway Company; Texas & Gulf Railway Company; Gulf & Interstate Railway Company of Texas; Pecos Valley Lines; and Concho, San Saba & Llano Valley Railway Company.

orace Booth for International & Great Northern Railway Com-

ent for Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner:*

Advances were proposed in rates on cotton and cotton linters from Texas points to New Orleans, Port Chalmette, Harveys, Westwego, Gretna, and Algiers, La., hereinafter referred to as New Orleans, by supplements 4, 5, and 6 to southwestern lines tariff, I. C. C. No. 852, and supplement No. 2 to St. Louis Southwestern Railway Company of Texas tariff, I. C. C. No. 167. The advances were to be effective November 2 and 5, 1911, respectively. They were suspended by the Commission until September 1, 1912.

Supplement 4 to I. C. C. No. 852 contains proposed cancellation of the following provision:

On shipments of export cotton and export cotton linters, from points on the * * * moving via the port of New Orleans (which includes Algiers, Gretna, Harveys, Port Chalmette, and Westwego, La.), not covered by through bills of lading to foreign countries (other than points in the Dominion of Canada), the regular local rates to the port (as per group No. 5, shown in this tariff) will be assessed and collected until necessary evidence of exportation to foreign destinations (other than points in the Dominion of Canada) is submitted, when the inland rate if higher will be reduced to the export rate, provided there is published from point of origin in connection with these lines a specific export rate which is lower than the inland rate.

Supplements 5 and 6 to I. C. C. 852 attempted to establish in lieu of the rates applicable to New Orleans for export, the local rates shown in the same tariff. Supplement 2 to St. Louis Southwestern of Texas, tariff I. C. C. 167 was suspended with respect to one item reading as follows:

Eliminate rates named in item 27 to New Orleans, Port Chalmette, Westwego, Gretna, and Algiers, La. *No rates in effect.*

All rates are stated herein in cents per 100 pounds.

A state commodity tariff of the railroad commission of Texas applicable on cotton and cotton linters, in bales, provides distance rates for 20 miles and less, 8 cents, which is increased progressively 2 cents for each additional 5 miles up to 100 miles, and 1 cent for each 10 miles thereafter, reaching the maximum at 45 cents for over 160 miles. The differential over Houston to Galveston, Texas City, and Port Arthur is 6 cents. The wharfage charge at Galveston is 1½ cents. The maximum rate, therefore, from Texas common points to Galveston and other Texas ports on domestic cotton is 51 cents, and on cotton for export it is 52½ cents. That export rate is published as the maximum through rate in the tariffs above referred to. These rates include cost of compression, 10 cents per 100 pounds. The same tariff names rates on cotton linters, in bales, including cost of compression, 75 per cent of the rates on cotton. The rates to New

Orleans on cotton linters for export are 3 cents less than the rates on cotton.

Previous to the advance in rates to New Orleans the railroad commission of Texas issued an emergency notice of hearing: "In the matter of the proposed readjustment of rates to apply on cotton and cotton linters, bales, any quantity, transported by railroads between points in Texas," in which it was stated:

As a basis for consideration at said hearing it is proposed to adopt, by emergency order, and in lieu of a general mileage schedule of rates provided in commodity tariff No. 1–F, a mileage schedule of rates, reaching a maximum at 160 miles, of 35 cents per hundred pounds. Present differential provision for rates to Galveston, Texas City, and other ports to remain in force and all special rates now applying from points taking rates higher or lower than the present mileage schedule to be reduced in proportion to the reduction now proposed in said schedule or upon such other basis as may be, in pursuance of said hearing, determined upon.

The maximum rate for a distance of 160 miles being 45 cents, the circular contemplated a reduction therein of 10 cents. After hearing at Austin, Tex., September 14, 1911, the carriers undertook to adjust the situation and prevent the reduction in the Texas rates by canceling the export rates to New Orleans, thus increasing the maximum rate to New Orleans from 52½ to 63 cents. These rates also include 10 cents per 100 pounds, cost of compression. The Texas & Pacific Railway, which reaches New Orleans via its own rails, was not a party to the proposed advance.

As is well known, prior to the enactment of the amended act it was the practice of carriers to equalize rates through the ports, and the inland portions were therefore uncertain quantities. This practice prevailed as to New Orleans and Galveston, but its extent was not conclusively shown by the testimony. The requirement that the inland portions of export rates should be published specifically brought about the publication of export rates to New Orleans. The Texas & Pacific was the first carrier which published these rates on the Galveston basis, and this action was closely followed by the Southern Pacific and the Santa Fe. The Galveston rate at that time was 56½ cents. Gradually other roads took like action, and now the application of equal rates from Texas points to Galveston and to New Orleans is quite general. It is difficult to completely outline the application of the same rates to Galveston and New Orleans, many local points not being included in the export basis to New Orleans; but the application of export rates to New Orleans is not so wide as to Galveston.

On September 1, 1910, the maximum export rate from Texas common points to Galveston was reduced 4 cents, following a similar reduction in the domestic rate made by the railroad commission of Texas. The rate to New Orleans was correspondingly reduced. It

was not until September 1, 1911, that the same rates to Galveston and New Orleans were as widely applied as they are to-day, and this extension was the real basis of complaint to the railroad commission of Texas by the commercial bodies of Galveston and Port Arthur and the Screwmen's unions of the same cities, which brought about the hearing at Austin above referred to.

The carriers allege that equal rates to New Orleans and Galveston were primarily due to the competition of the Texas & Pacific, which, having its own rails to New Orleans, naturally prefers to transport the cotton to that port. The Missouri, Kansas & Texas of Texas; Gulf, Colorado & Santa Fe; Trinity & Brazos Valley; International & Great Northern; Houston, East & West Texas; Galveston, Harrisburg & San Antonio; San Antonio & Aransas Pass; and Houston & Texas Central roads have lines to Galveston. The export basis was first published by such lines when they met the competition of the lines reaching New Orleans, was gradually extended and, finally, the fourth section of the act required the present further application.

It was testified that, distance considered, the cost of the service is greater to New Orleans than to Galveston. It is not necessary to accurately define the cotton-producing territory of Texas, but it lies more generally in the eastern than in the western portion and the area of production is by no means coextensive with the limits of the common point territory. Points in the northern part of the state are approximately 700 miles from Galveston, but comparatively little cotton is produced there. The same may be said of San Angelo and Big Springs. The average haul on cotton from Texas points to Galveston is 225 miles; to New Orleans 488 miles. From 11 points on the Missouri, Kansas & Texas Railway of Texas the average distance to Galveston was found to be 291 miles, and to New Orleans 488 miles. The average distance to New Orleans is 67 per cent greater than to Galveston; therefore using the Galveston rates and distance as a basis the carriers could establish a rate to New Orleans 34 cents higher than the maximum rate to Galveston. Considerable cotton moves from points that are more distant than the average distances from Galveston and New Orleans, but, excepting that which moves to New Orleans via the Texas & Pacific, that which moves to New Orleans must go via Houston or Beaumont. The rates from Beaumont to Port Arthur are the same as from Houston to Galveston and the rates from Beaumont to New Orleans are the same as from Houston. It is about 25 miles from Beaumont to Port Arthur. The haul to New Orleans via Houston or Beaumont must therefore exceed in distance that to Galveston or Port Arthur by the difference in distance between Houston and New Orleans and Houston and Galveston, 312 miles; or that between Beaumont and New Orleans and Beaumont and Port Arthur, about 255 miles.

It is asserted that the rates in Texas are unreasonably low and not a proper measure of the reasonableness of the rates to New Orleans. In this connection, it is seen that the 63-cent suspended rate to New Orleans is an aggregate of intermediate rates the factors of which are the Texas distance scale to Houston, 45 cents, which includes 10 cents for cost of compression, and the rate from thence to New Orleans of 18 cents, which does not include anything for compression. The rate including compression is 28 cents. The rate from Houston to Galveston, a distance of 48 miles, is 6 cents. On the Texas distance scale it would be 20 cents. The record does not show why that rate was established, but it is assumed that it was to enable the ports to meet the competition of Houston. The distance from Houston to New Orleans is 362 miles and the rate is 18 cents. From Houston to New Orleans is nearly eight times the distance from Houston to Galveston and the rate is but three times as much. Manifestly the carriers can not be required to transport cotton from Houston to New Orleans at the same rate as from Houston to Galveston. We can not assume that the Texas mileage scale is unreasonably high; nor can we hold that even on the question of competition between New Orleans and Galveston the substantial difference in distance and in service must, as a matter of law, be ignored.

The rates to Galveston are the same locally and for export, except for the 1½ cents wharfage charge. They were reduced in 1910, and are now as low as or lower than they have been for a term of years. The local rates to New Orleans have always been higher than the local rates to Galveston. Protestants contend that defendants have not sustained the burden of proof and proven conclusively that the proposed 63-cent rate to New Orleans for export is reasonable. It appears, however, that it is the same as the local rate to New Orleans, which has obtained for a long time. Defendants and the Galveston interests assert, and with obvious force, that if 52½ cents is a reasonable rate *per se* to New Orleans, it is obviously unreasonable *per se* for the substantially shorter distance and lesser service to Galveston. It is admitted that if the rate to New Orleans were 52½ cents, and the rate to Galveston were 42 cents, New Orleans would be no better off than if the rate to New Orleans were 63 cents and that to Galveston 52½ cents.

The carriers frankly admit that but for the proposed action of the railroad commission of Texas, they would not have sought to advance the rates to New Orleans. They say, however, that they may voluntarily accept a lower rate than they can be compelled to accept, and that while they were and would be willing to maintain the same export rate to New Orleans as to Galveston if they could do so without sacrificing their revenues under the Galveston rates, they can

not afford and can not reasonably be required to sacrifice that revenue when the obvious result would be a reestablishment of the relationship as between New Orleans and Galveston that will obtain if the suspended tariffs become effective.

It is shown that the percentage of the Texas crop of cotton received at New Orleans gradually decreased to the season of 1907–8 and has been approximately the same each season since. No explanation is offered as to the reasons for this decrease. It is plain, however, that some circumstances and conditions other than the rate adjustment must have had that effect, for, as has been seen, there was an equalization of rates prior to 1907. But New Orleans gradually lost the business which it had in former years.

The protestants base their allegations that the increased rates are unjust and unreasonable on the grounds:

(*a*) That the advance in the rates was primarily due to contemplated action on the part of the railroad commission of Texas to reduce the Texas rates. (*b*) That New Orleans and Galveston are competitive ports for the exportation of cotton from Texas. (*c*) That the practice of the railroads previous to 1907 was to equalize rates via those ports. (*d*) That the rates to New Orleans on the Galveston basis were voluntarily established. (*e*) That the practice of carriers generally throughout the country has been and is now to equalize rates via various competitive ports.

It is generally true that rates on cotton to competing ports for export are practically the same. For instance, similar rates apply from Oklahoma points to New Orleans and Galveston; to New York and Boston; to Charleston, Savannah, Brunswick, and Wilmington, and although the distances vary greatly, in some instances the rates are the same. The rate from Atlanta, Ga., to Charleston, Savannah, Brunswick, and Wilmington is 43 cents, and the distances are 300, 295, 275, and 448 miles, respectively; from Cordova, Ala., to the same ports the rate is 61 cents and the distances are 499, 446, 452, and 647 miles, respectively. The rates from points in Tennessee, Alabama, Georgia, Mississippi, and Arkansas, ranging in distance from 334 miles up to 545 miles, are from 42 to 50 cents.

Firms engaged in the cotton business in New Orleans also have agents in Galveston. In some cases shipments are made through New Orleans for the reason that steamship room can be obtained there and not at Galveston, and vice versa. Another reason for shipments to New Orleans, although from points from which the rates are higher than to Galveston, is that some spinners in Europe have become accustomed to New Orleans cotton, and their conservatism has established preference for such cotton, even though two bales from the same field may be received, one via Galveston and the other

via New Orleans. The steamship rates from New Orleans and Galveston are approximately the same.

As has been seen, it is the contention of the carriers that, distance alone considered, the rates to New Orleans should be higher than to Galveston. There are other reasons which are equally important, such as the fact that many of the carriers have their own rails to Galveston. Naturally the Galveston lines prefer Galveston and the New Orleans lines prefer New Orleans. The carriers contend—we think with force—that the cited instances of equal rates are not analogous to the situation now under consideration. *Kansas City Transportation Bureau of the Commercial Club* v. *A., T. & S. F. Ry. Co.*, 15 I. C. C., 491.

As stated, the rate to Galveston for export is published as a through rate. It is contained in tariffs on file with us which provide: "Group 8 rates will apply to Galveston, Tex., for export and include steamship delivery." It was testified that the conditions at Galveston are different from those at New Orleans. The export rates to both ports are to ship side. At New Orleans cotton may be examined, but the testimony of one witness is to the effect that at Galveston cotton can not be examined at railroad terminals. The tariff which contains these rates for export also contains joint through rates from various Texas points of origin via Galveston to New York and other eastern destinations. It appears that little or no cotton is manufactured at Galveston and that shipments to that port are all or substantially all interstate shipments or for export.

In *In the matter of Rates, Rules, and Practices of the Louisiana Railway & Navigation Company with Respect to the Transportation of Sugar*, 22 I. C. C., 558, we held that the inland intrastate movement from New Orleans to Gramercy, La., of sugar imported from Cuba is subject to the federal act, and quoted from *Southern Pacific Terminal Company* v. *I. C. C. and Young*, 219 U. S., 498, as follows:

> It makes no difference, therefore, that the shipments of the products were not made on through bills of lading or whether their initial point was Galveston or some other place in Texas. They were all destined for export, and by the delivery to the Galveston, Harrisburg & San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the terminal company being a part of the railway for such purpose.

We hold that export traffic and export rates from Texas points to Texas ports are subject to the act to regulate commerce and clearly within the jurisdiction of this Commission.

We are not insensible to the rivalry between New Orleans and Texas ports for Texas cotton or of the competitive conditions. We understand the desirability to the producer of having more than one port through which his product may move, but, under the broad equality of rates to New Orleans and Galveston, during the crop

year 1910–11 New Orleans received but 150,392 bales out of a production of 3,258,651 bales of cotton in Texas. It is argued that if we permit the advances to become effective New Orleans will be entirely shut out of participation in Texas cotton, but of these 150,392 bales (a higher per cent than in any year since that of 1904–5, which was the highest of any following the effect of the Galveston tidal wave), 119,972 reached New Orleans via the Texas & Pacific, and its rates have not been changed. Of the remaining 30,420 bales, 14,392 came via the Southern Pacific and 16,028 via all the other lines. On account of preference in some instances for cotton moving through New Orleans, some of this cotton paid a rate as high as 70 cents; some of it paid materially lower rates from territory naturally tributary to New Orleans.

We have considered all of the testimony and arguments that have been presented, and, in view of all of the facts, circumstances and conditions shown we think that defendants have sustained the burden cast upon them by the statute, and we can not find that the proposed increased rates to New Orleans are unreasonable.

While we do not find, in view of the facts shown, that the rates under suspension are unreasonable, the export rates to Galveston being subject to the federal act it is clearly within the right of the carriers, in the absence of order of this Commission to the contrary, to continue the New Orleans rates on their present basis and to also maintain the present export rates to Galveston.

The attitude of the carriers in reference to the refunding clause applicable at New Orleans is that it is illegal and was sought to be canceled pursuant to the expressions of the Commission in *In the matter of the Substitution of Tonnage at Transit Points*, 18 I. C. C., 280. They are not averse to a clause which shall accord with the Commission's views. It was testified that the provision was not abused and that the cotton never left the custody of the carriers. Protestants aver that they seek no unlawful or unreasonable rule or practice but that a reasonable and lawful amended rule should be provided. The text of the provision shows its possibilities. It is wide open and does not comply with the Commission's recommendations. If properly modified we see no reason for objecting to its restoration. Rules that effect the purpose which we understand this rule was intended to reach and which we understand to be what protestants seek are in effect and in operation at other points, and apparently are not the cause of unlawful practice or unjust discrimination when properly policed.

The orders suspending the advances will be vacated.

No. 3460.

FRANK SIMPSON FRUIT COMPANY

v.

WELLS FARGO & COMPANY.

Submitted March 22, 1911. Decided May 6, 1912.

Tariff provision estimating the weight of a case of 30 dozen eggs to be 55 pounds found unreasonable to the extent that it exceeds an estimated weight of 53 pounds. Reparation awarded.

Joseph D. Simpson for complainant.

Guerney E. Newlin for defendant.

Report of the Commission.

By the Commission:

The complainant is a corporation dealing in fruits, produce, and dairy products at Los Angeles, Cal. In its petition, filed August 11, 1910, it is alleged that unjust and unreasonable charges were exacted by the defendant for the transportation of a carload of eggs, shipped from Kansas City, Mo., to Los Angeles. Reparation is asked.

On January 15, 1909, the complainant received at Los Angeles a carload shipment consisting of 400 cases of eggs, each case containing 30 dozen eggs. This shipment moved from Kansas City, Mo., via Wells Fargo & Company, which collected charges thereon in the sum of $660, based on a rate of $3 per 100 pounds, applied to a total weight of 22,000 pounds, which is equivalent to an estimated weight of 55 pounds per case.

The complainant does not attack the rate of $3 but maintains that each case of eggs in question weighed but 53 pounds, and that the total weight of the shipment was therefore 21,200 pounds, on the basis of which reparation in the sum of $24 is sought.

Defendant's tariff was governed by official express classification, which contains, under "scale M," the following provision:

> *Eggs—Table of rates per case of 30 and 36 dozen.*—When quoting rates to patrons on eggs agents will name the rate per case, as shown by the following table, instead of the rate per 100 pounds. Cases of a greater or less capacity must be charged for in the same proportion. Cases must never be charged for at less than their full capacity. When the rate per 100 pounds is not given, charge in proportion. Minimum, 35 cents per shipment, unless the graduates under the merchandise rate is less; when carried by more than one company, minimum, 25 cents for each company carrying:

When the rate on eggs per 100 lbs. is	$3.00
Rate per case of 30 doz. is	1.65
Rate per case of 36 doz. is	1.98

The transportation charges on the shipment in controversy were exacted by the defendant in accordance with the above tariff provisions, which were in force at the time of movement.

The complainant calls attention to the fact that freight classifications generally estimate the weight of a case of 30 dozen eggs at 53 pounds, and offered in evidence a number of freight bills showing this to be the estimated weight on various shipments received by it. The complainant also contends that "scale M" should be abolished and that cases of eggs should be charged for at their actual weight.

In support of its contention that the total weight of the shipment in question was 21,200 pounds the complainant's representative at the hearing stated under oath that this shipment had been weighed and that the approximate weight of each case of eggs was 53 pounds. The defendant sets out in its brief that its rule estimating the weight at 55 pounds has been in effect for some years and in the absence of a showing that the estimated weight is too high it should not now be disturbed.

Defendant's answer admitted the facts alleged in the petition, in which it was specifically averred that these eggs weighed 53 pounds per crate. This fact was again admitted by counsel for defendant upon the hearing. Furthermore, no testimony was offered on behalf of the defendant.

The rate of $3 is still in force, and "scale M" in a somewhat modified form also remains in effect and still estimates a case of 30 dozen eggs to weigh 55 pounds.

The establishment of estimated weights is of material advantage to both the shipper and carrier in expediting movements, and provided such estimated weights are just and reasonable, we can see no objection to their maintenance.

Upon consideration of all the facts and circumstances of record, we are of the opinion and find that the defendant's rule under scale M above referred to estimating the weight of a case of 30 dozen eggs at 55 pounds is unjust and unreasonable to the extent that it exceeds 53 pounds, which weight will be prescribed as the maximum for the future. We further find that the complainant received a carload of eggs in accordance with the foregoing statement of facts, and paid charges thereon on an estimated total weight of 22,000 pounds, herein found to have been unreasonable; that said complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate of $3 per 100 pounds on an estimated total weight of 21,200 pounds above found reasonable, and that it is therefore entitled to an award of reparation in the sum of $24 with interest from July 22, 1909.

An order in accordance with these conclusions will be entered.

No. 4014.

C. M. McCLUNG & COMPANY ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted December 19, 1911. Decided May 7, 1912.

Rate of 23 cents per 100 pounds on carload shipments of sheet-iron roofing from Newport, Ky., and Cincinnati, Ohio, to Knoxville, Tenn., not found to have been unreasonable or discriminatory.

S. J. Bolton for complainants.

Nelson W. Proctor for Louisville & Nashville Railroad Company.

Charles J. Rixey, jr., for Cincinnati, New Orleans & Texas Pacific Railway Company.

Claudian B. Northrup and *Alex. M. Bull* for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant corporations are engaged in buying and selling hardware, etc., with headquarters at Knoxville, Tenn. By an original petition, filed April 10, 1911, complainant C. M. McClung & Company alleges that defendants, Louisville & Nashville Railroad Company and Southern Railway Company, charged an unreasonable and discriminatory rate for the transportation of eight carloads of sheet-iron roofing from Newport, Ky., to Knoxville, Tenn.

By supplemental petition, filed August 11, 1911, complainant C. M. McClung & Company prefers a similar charge against the Louisville & Nashville Railroad Company, Southern Railway Company, and Cincinnati, New Orleans & Texas Pacific Railway Company as to one carload of sheet-iron roofing carried from Newport, Ky., to Knoxville, Tenn.; and complainant W. W. Woodruff Hardware Company alleges that said defendants charged an unreasonable and discriminatory rate for the transportation of two carloads of sheet-iron roofing to Knoxville, Tenn., one of which originated at Niles, Ohio, the other at Newport, Ky. As to the shipment from Niles, Ohio, only the rate south of Cincinnati is in issue. On August 28, 1911, the original complaint was amended by bringing in the Cincinnati, New Orleans & Texas Pacific Railway Company as an

additional defendant. Complainants seek reparation and the establishment of lower rates for the future.

The shipments involved, consisting of common black sheet roofing, moved during the period April 9, 1909, to January 9, 1911, and were consigned to complainants as above set forth. Charges were collected in each instance based upon a rate from Newport, Ky., of 23 cents per 100 pounds, carload minimum weight 40,000 pounds, and a similar rate from Cincinnati, Ohio, on the shipment from Niles, Ohio.

Southern classification No. 38, in force when the shipments moved, rated both iron roofing and sheet iron sixth class, but there were commodity rates from Newport and Cincinnati to Knoxville of 23 cents on iron roofing and 20 cents on sheet iron. Complainants' contention is that the two articles are not so dissimilar in character and value as to justify the application of any higher rate to the roofing. Complainants testified that corrugated roofing iron is nothing but sheet iron corrugated, and galvanized-iron roofing is galvanized sheet iron; that the material is identical and the prices practically the same, dependent upon the gauge or thickness of the iron; that sheet iron is used in manufacturing, some of the products thereof being coal hods, sheet-iron buckets, etc., and to some extent in the roofing and siding of buildings, while roofing is used only for roofing and siding purposes. At the same time they conceded a difference in the two articles, and admitted that sheet iron would require painting or other preparation to satisfactorily adapt it for use as roofing.

Defendants deny that sheet iron and iron roofing are the same in trade or commerce, and show the successive stages of fabrication from raw material to iron bars; the manufacture of sheet iron from bars, and the use of sheet iron in making corrugated and galvanized roofing, claiming that roofing is a product of sheet iron. They aver that the rate attacked is reasonable and just, because it is lower than the class rate which would apply were there no commodity rate in effect, and which might reasonably be applied but for competition; because it is lower than the general average of rates from Cincinnati and Newport to Knoxville; lower than the rates fixed by various southern state railroad commissions for the transportation of roofing iron intrastate for like distances; lower than the local scale rates of various southern roads for the same distances; lower than the rates formerly in effect, under which this traffic moved freely for years; and because it is the same as the rate to Chattanooga, Tenn., where Knoxville encounters its strongest competition.

In explanation of the rate of 20 cents on sheet iron it is shown that the reduction was forced by competition. For many years the class rate of 30 cents applied to both sheet iron and iron roofing. On July

1, 1907, as a part of a general readjustment of rates from the Buffalo-Pittsburgh zone, eastern and Virginia cities, and Ohio and Mississippi River crossings to the principal southeastern common and basing points, commodity rates were established on these articles, including a rate of 23 cents to Knoxville and Chattanooga and related group points. Previously to that date manufacturers at Jackson and Nashville, Tenn., for competitive reasons, had sought and were granted low rates on sheet iron, the rate from Cairo on shipments from Pittsburgh being made 10½ cents. This was followed by demand of Chattanooga interests to be put in position to compete, and a 20-cent rate to that point was established. From Ohio and Mississippi River crossings Knoxville rates are usually made the same as to Chattanooga, and, acceding to demands of the manufacturers at Knoxville for restoration of the usual relationship, the 20-cent rate was made effective to that point on May 16, 1908.

The tariffs on file with the Commission establish the fact that in many sections of the country, including southeastern territory, sheet iron and iron roofing are in classifications and commodity lists grouped together and given the same rates, and this is true with respect to the rate north of Cincinnati on shipments from Niles, Ohio. As to traffic from Newport and Cincinnati to Knoxville, however, through stress of competition, carriers have removed sheet iron from its usual relation and made lower rates thereon. Does this fact warrant a finding that the rate on another and different article, which does not compete with sheet iron, must also be lowered and kept on the same footing, in the absence of any showing that the rate attacked is unreasonable? We think not.

It is true that in trade journals roofing-iron prices are quoted under the general head of "sheets," and there is but little variation in the prices of sheet iron and roofing iron of the same grades; but the record clearly indicates that in trade there is no competition between the two; that competitive transportation conditions brought about the low rate on sheet iron, and that these conditions do not exist with respect to roofing iron.

As a general rule, there is no objection to a reasonable differential between the rates on material and the manufactured products thereof. These commodities here involved bear to a degree the relation of raw material and products, and the difference in the rates is not found to be undue. It follows that the complaint must be dismissed, and it will be so ordered.

No. 4242.

MOBILE CHAMBER OF COMMERCE ET AL.

v.

MOBILE & OHIO RAILROAD COMPANY ET AL.

Submitted March 15, 1912. Decided May 7, 1912.

1. Where a railroad has a wharf to which its tariffs offer delivery and at which part of the shipping public is served such a wharf becomes a public terminal, and if all shippers are not given access to it by the boats they choose to employ, it then becomes the carrier's duty to make delivery at other available docks at the same rate.
2. A railroad has a right to reserve wharves for its own use and for the use of such water carriers as it prefers, provided it affords to the public access to equal facilities elsewhere at equal rates.
3. Where a rail carrier making a rate to a port institutes a practice of authorizing its agents to issue bills of lading for water lines it must extend such practice to all water lines under reasonable regulations.

William H. Armbrecht and *Luther M. Walter* for complainants.
R. Walton Moore and *S. R. Prince* for defendants.

REPORT OF THE COMMISSION.

LANE, *Commissioner:*

The Southern Railway and the Mobile & Ohio Railroad own docks at Mobile, to which they make ship-side delivery on export traffic. They publish rates to and from these docks, which include not only the service of carriage to Mobile, but the supplemental service of switching to their own wharves, the use of the docks, and the unloading of the cars. For these services they make no separate terminal charge, the value of the services being included in the one published rate to or from the side of the ship. It, therefore, can not be ascertained how much the railroad charge may be for the delivery to another carrier at Mobile when the shipment is destined to some other dock. These roads not only extend this service to their own docks, but to the docks of each other; that is to say, the Southern will give delivery at ship-side on the Mobile & Ohio docks at the published rate for ship-side delivery, paying out of its rate to the port whatever charges may arise because of such service by the Mobile & Ohio, and the Mobile & Ohio delivers similarly at Southern docks. They also absorb the charges for delivery over the city dock, a municipal wharf in close proximity to the Southern and Mobile & Ohio docks.

The upshot of this arrangement is to make these docks the water-side terminals of these two railroads at which ships may call for the receipt or delivery of freight, and from and to which a uniform rate on export and import traffic obtains. These wharves thus become railroad facilities—freight stations analogous to team tracks or sheds for a certain kind of traffic.

But these facilities are not adequate to all of the demands of Mobile traffic. Ships call at Mobile which can not find room at any of these water terminals, although bearing freight for these railroads or seeking freight carried by them. These ships have been denied access to the railroad docks because such docks are given over to certain preferred lines of steamships with which the railroads have special arrangements. They are thus forced to berth at other docks on the water front for lack of room at the Southern and Mobile & Ohio docks, and when forced to other wharves the shipper over these railroads is compelled to pay a series of charges for switching, docking, and unloading in addition to the export rate from the interior point to Mobile. Thus the shipper desirous of securing the lowest rate is compelled to ship over those lines of steamships preferred by the railroads and with which they connect. The only alternative is to pay twice for the service of ship-side delivery—once in the rate made by the railroad to ship-side ("ship-side" here meaning the delivery described above) and again in the switching and handling of his car to and at some other dock.

This condition has not always obtained at Mobile. Until some two years ago the Southern and Mobile & Ohio gave ship-side delivery upon their export rate to any dock in Mobile at the ship-side rate. In 1910, however, through private enterprise, the Turner-Hartwell docks were built, which it appears the Mobile & Ohio sought to lease, and failing in this effort the defendants have withdrawn their former practice of absorbing switching and other costs to and from the other docks, so that at this time if a shipper wishing to unload import traffic at Mobile berths at the Turner-Hartwell dock, the freight destined inland must pay a total charge higher than that which would be imposed had the shipper been able to land his freight at a wharf reached by either of these carriers.

Furthermore (and this is the second serious cause of complaint), if freight is destined via some other wharf from an interior point, these railroads will not issue a so-called through bill of lading, although if the shipment passes over one of their own wharves and is carried to Europe by one of the preferred lines of ships, such bill of lading will be given. The complainants urge that this practice tends to, and does in fact, limit the export traffic of Mobile to those ships which the rail carriers may choose to favor, and the record certainly sustains this contention.

The railroads make answer that they may prefer one boat line over another for their own protection. But three facts appear of record which cast doubt upon the good faith of such defense: In the first place the through bill of lading given by the railroad expressly limits its liability to the land haul and is in fact two separable bills, one applying on the rail haul and one to the water haul. In the second place these roads refuse to give through bills of lading in connection with the Elder-Dempster line at Mobile, presumably upon the ground that such line is not reliable, while giving through bills via the same line at New Orleans. And again through both New Orleans and Galveston, the Gulf competitors of Mobile, as well as through North Atlantic ports generally, such practice of through billing seems to have proved altogether practicable. The Mobile & Ohio itself issues through billing as to all ships applicable via New Orleans.

These, then, are the things desired by the Mobile Chamber of Commerce: That the Southern and the Mobile & Ohio railroads shall make all wharves in Mobile serviceable to the export and import traffic of that port, either by making the expense of ship-side delivery the same to all, or by separately stating the nature of the terminal service given by the railroads in what is known as ship-side delivery and establishing separately the charges therefor, so that those shippers who do not wish that service or can not get it by these railroads, but do wish similar service elsewhere, may not be forced to pay extra therefor; and that, in any event, through bills of lading if given via one route shall be given via others within reasonable limitations.

We are persuaded that where a railroad has a wharf at which its tariffs offer delivery and at which part of the shipping public is served, but to which it does not give all access, it must make delivery at the same rate at some other wharf. This reasoning meets with the answer that the docks of the carriers are private facilities of the railroad so that the railroad has the right to reserve its docks for the use of only such ships as it prefers, which we understand to be the conclusion of the Supreme Court in the Pensacola case, *L. & N. R. R. Co.* v. *West Coast Naval Stores*, 198 U. S., 483. It does not appear from the opinion in that case, however, or from the pleadings, that the railroad held out by its tariffs to give ship-side delivery at its wharf upon a through rate. The question raised in that case was whether a shipper had the right at common law to have such vessel as he might select call at defendant's wharf for his goods. The Supreme Court held that he had not, and that the defendant railroad could limit the use of its wharf under the common law to such vessels as it chose, because (1) the wharf was not a public but a private facility erected for the purpose of more conveniently procuring the transportation of goods beyond its line;

and (2) "The defendant had a right to choose its own agencies and grant to them the exclusive privilege of access to its own wharf, which it built only for the purpose of continuing the transportation of goods which it had transported to the end of its line." In considering this case the fact is to be borne in mind that it was not brought under any provision of the act to regulate commerce, the plaintiff resting its case entirely upon what it claimed to be a common-law right and expressly disclaiming its reliance upon federal statute.

It is our view that this decision is not to be regarded as controlling in the present case. That this proposition may be made clear, we will examine the reasons upon which the Supreme Court rested the decision rendered. As to the character of these wharves, there is no doubt that at common law on the facts presented to the court the wharves in question were private. As the court found, the defendant had provided adequate depots elsewhere in Pensacola for the delivery of domestic freight, and these wharves were used for the performance of an additional service which it had undertaken, but as to which it owed no duty to the public under the common law. By section 1 of the act to regulate commerce as amended in 1906 it is now provided that the term "railroad" shall include "all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein; and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property." And the term "transportation" is defined as including "all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier, subject to the provisions of this act, to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto."

Further, in the same section it is made the duty of all common carriers "subject to the provisions of this act to establish, observe, and enforce just and reasonable regulations affecting classifications, rates, or tariffs, * * * bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to, or connected with, the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this act upon just and reasonable terms, and every such unjust and unreasonable classification, regulation, and practice with reference to commerce between the states and foreign countries is prohibited and declared to be unlawful." Under section 15 as

amended in 1910 the Commission is empowered to determine and prescribe what will be the just, fair, and reasonable regulation or practice which shall be thereafter followed by the carrier as to the services which the carrier is required to give under section 1.

It must be clear that if language can be used which will bring within the jurisdiction of the Commission all rates, regulations, and practices of the carrier touching the receipt or delivery of freight and by all facilities, such language may be found in the provisions of the present act, which effected a complete change in the law as affecting such interstate carriers.

As to the second principle upon which the Pensacola decision was based the court cited a number of cases. *A., T. & S. F. Ry. Co.* v. *D. & N. O. Ry. Co.*, 110 U. S., 667; *G., C. & S. F. Ry. Co.* v. *Miami S. S. Co.*, 86 Fed., 407; *Little Rock, etc., R. R. Co.* v. *St. L. S. W. Ry. Co.*, 63 Fed., 775. An examination of these cases discloses that each of them involved the question whether a carrier could be required to enter into through routing and through billing arrangements with a connecting carrier, and in each case the court held that at common law such arrangements were purely a matter of private contract between the carriers, and that this rule had not been altered by statute; but each of these cases pointed to the English railway and canals act, which since 1873 had empowered the British railway and canal commission to require the establishment of through routing and through billing arrangements between connecting carriers, whereas such a rule had not been imposed by statute upon the carriers in the United States. Subsequent to these decisions, however, Congress by section 15 as amended in 1906 enacted provisions similar to those in the English act as to through routing and billing, and thus imposed on the railroads the obligations which the courts in those cases properly held not to have existed before. The point we would make clear is that in the *Pensacola case* the Supreme Court based its decision on common-law principles and precedents which have been superseded by subsequent amendments to the act to regulate commerce, and that no provision of the act to regulate commerce was involved in the decision of the *Pensacola case, supra.*

The fundamental distinction between the problem presented in this case and that considered by the supreme court in the *Pensacola case* is that here the rail carriers have simply undertaken to transport to ship-side, and the question is as to their duty in administering their facilities for ship-side delivery under their tariffs, whereas it appears that the court in the *Pensacola case* considered the Louisville & Nashville to have undertaken transportation beyond those wharves, and the question was as to the right of a carrier to select its own agents to assist it in rendering such transportation beyond its own line. That the latter question was the one considered by the court

seems clear, for in summarizing the plaintiff's argument the court said:

> But the wharf has been erected *to enable defendant* to more conveniently *carry out contracts for transportation beyond its own line* which it was not compelled to make and which it could carry out by such agencies as it chose. (Page 495.)

And in its opinion the court said:

> *Having the right*, as the authorities prove, *to decide what agency it would employ for the purpose of transporting goods beyond its own line*, and not being bound to enter into contracts or arrangements with one person or carrier because it had so contracted or arranged with another, *we think it follows that defendant was not obliged to permit the public to have access to its wharf built for the purpose stated*, simply because it granted such permission to those with whom it made arrangements of the kind set forth in the plea. *While refusing to make any agreement with defendant for the further transportation of plaintiff's goods beyond Pensacola*, plaintiff nevertheless claims the right to use the wharf erected by defendant for its own purposes. This can not be sustained.

Furthermore the court in support of its conclusion that the Louisville & Nashville Railroad had a right to make preferential contracts with certain connecting water carriers, cited the *Express Company cases*, 117 U. S., 1, which announced the doctrine that so long as a carrier discharges its public duty it is of no concern to the shipper what agency it may select to assist it in so doing.

Evidently the court had in mind, not such contracts by the Mobile & Ohio and the Southern Railway as are now before us for transportation to Pensacola ship-side, but contracts by the Louisville & Nashville Railroad for transportation through Pensacola to other ports. In the present record it is clear that the undertaking of the railroad is simply to carry and make delivery to ship-side. It does not undertake on its own account to carry beyond Mobile, and therefore there is no question presented as to its right to select an agent for such continued transportation. It is to be clearly understood that by the so-called through bill of lading to foreign ports the liability of the rail carrier is expressly limited to the rail haul and its undertaking is completed upon delivery to the steamship or at the steamship pier. What the Mobile & Ohio Railroad undertakes to do by making preferential contracts is not to select agents to assist it in the performance of a public duty, for it assumes no duty to undertake ocean carriage, but by such contracts it attempts, after it has completed its transportation duty, to coerce shippers into employing a particular water line in a distinct undertaking. Obviously, therefore, the situation now presented is entirely different from that considered in the *West Coast case* and the cases upon which it was based.

While throughout the hearing the case appeared to base, so far as the defendants were concerned, upon the theory of the *Pensacola* . such theory was apparently abandoned upon argument, and the nent was made by counsel that any shipper could have access

to the railroad docks so long as this did not interfere with the definite sailings of the preferred lines. Such statement appears to be consistent with the tariff provision which reads: "The rates named herein apply to ship-side and include all expenses necessary to make such delivery except as herein noted. Rates named herein will apply via the Mobile & Ohio Railroad as follows, only to Mobile, Ala., on traffic delivered over wharves reached by the rails of the Mobile & Ohio Railroad or Southern Railway." (See appendix to this report for further provisions.)

We can not regard the Mobile docks of the defendants in any other light than as public terminals. These carriers make their rates to apply from point of origin to the ship's side at those docks. The necessary implication arising from these facts is that access must be given to these wharves by whatever ship the shipper chooses to have his freight carried from the wharf so long as such access may be safely and properly given. A railroad may not have a preferred line of steamships to the exclusion of other ships. Without doubt it may prefer one line and have more intimate relationship with such line than with others, but its duty as a common carrier by rail can not be neglected because of such arrangements. It may set aside one or more docks for the use of such allied lines so long as such practice does not conflict with its duty to give delivery at these docks to whomsoever may apply for the freight properly deliverable at that point. If it chooses to give up its entire dock facilities to some particular line, it may do so, but it must make delivery upon equal terms to other ships at that port, for it has undertaken to deliver the freight it transports at the ship's side. As recently stated in *Baker-Whiteley Coal Co.* v. *B. & O. R. R. Co.*, 188 Fed., 412, "that a railroad company has the right to keep a pier for its own use and for the use of such transportation lines as have contracts with it for transshipment, can not be denied, provided it affords to the public reasonable facilities elsewhere at equal rates for the receipt of coal shipped over its road to Baltimore to be there transshipped." In other words, a railroad has certain primary duties which it must discharge to the shipping public before it is free to exclude this public from any of the facilities which it uses or controls in the performance of its public duties. It need not make a rate to ship-side unless its lines extend there; but, making such rate, and having such facilities, it must give the shipper access to the terminal to receive the traffic; and it may no more discriminate as between shippers at a wharf than it may lawfully discriminate as between trucks at a freight shed.

These defendants need not furnish ship-side delivery upon a through rate unless they so desire. They may make their rates to Mobile proper and charge an added rate for the ancillary service which they give to their own docks, or the city dock, or the Turner-Hartwell

dock, stating these rates separately. If they undertake to give service at their docks on these separately established terminal rates applicable to ship-side delivery, they must allow all who pay them to take advantage of them; there can be no such thing as a terminal which is not a public terminal—a rate charged which only applies to certain favored connections—unless a like rate is made to some other dock or facility where a like service is rendered. We shall not call upon the carriers to state their terminal charges separately, but this appears to us most consonant with what the Supreme Court said in the *Union Stockyards case*, 215 U. S., 98.

There is here present a further contention that there is a discrimination as between the two carriers defendant in giving service to the dock of one railroad company or to that of the other while not extending the same arrangement to the other railroad carriers and docks at Mobile. This, however, we do not think an undue discrimination, inasmuch as a shipper is not entitled to have all the carriers at Mobile unite in this dock service at a common rate. All we may properly hold is that the carriers defendant must make their wharves available to the ships to which the shipments are destined on the rate they charge for ship-side delivery, and they may do this at any wharf there, reserving their own docks for certain lines of ships and giving delivery at whatever other docks they choose.

As to the discrimination in the matter of through billing as between shippers who desire to have ship-side delivery on export traffic at Mobile, we find that the practice of withholding through bills of lading, excepting as to certain preferred water lines, is undue and illegal discrimination. There is no legal obligation on a rail carrier to give a through bill of lading covering movement by water beyond its line. Such practice is, however, of great advantage to shippers, and if given in the name of one boat line should be given in the name of others who are similarly circumstanced. A railroad may entirely destroy the export traffic of a port by refusing to issue through bills of lading; and to say that it may exercise this great power wantonly and arbitrarily is contrary to the spirit and letter of this law.

The defendants object that they should be free to select from the many water carriers the few that they deem reliable and give through routing only by such. If the carrier were concerned solely with the best interests of the shipper its dictum as to which water carriers are responsible might be of value. As a matter of fact, however, it is patent that the defendants in selecting particular water lines for their bounties are not primarily concerned with the responsibility and reliability of such lines, as the experience of the Elder-Dempster line with these defendants shows. The Elder-Dempster line formerly had a through billing arrangement with the defendants from Mobile to rope. In 1910 the Mobile Liners (Incorporated) was given this

contract. The Elder-Dempster line has since sought to renew this arrangement at Mobile, but has been refused. Shippers who have sought to route via the Elder-Dempster line from Mobile have been refused through billing, although by this route the rate may well be cheaper than by the Mobile Liners. There is no question as to the responsibility of the Elder-Dempster line. It owns, according to the record, over 100 ships. Indeed, the defendant is a party to through bills of lading by this very steamship line via New Orleans to Europe. The explanation appears in a frank admission of defendants to be simply this: The defendants for competitive reasons desire that all the export shipments which they bring to Mobile shall go over their wharves. But, as the record shows, the normal flow of traffic would bring to Mobile more exports than their docks at this port can handle. Therefore they have, to an extent at least, pursued a policy which results in diverting such exports as can not be handled under present conditions at Mobile to ports where docks controlled by them or by their allies can handle this traffic.

It is easy to be misled by the use of the term "through bill of lading," for it implies that the originating carrier has undertaken to carry the traffic from point of origin to an ultimate point of destination—say, from Memphis to Liverpool—and that the originating carrier under the present law is responsible for the fulfillment of this contract of carriage. But the through bill of lading that is given by the rail carriers upon movements of traffic through Mobile, New Orleans, or Galveston to Europe is not at all of this character. It is a receipt on the part of the railroad for the carriage to the port and a receipt by the ship line for the carriage from the port to Europe. This receipt for carriage beyond the port is not given in the name of the rail carrier, but in the name of the steamship company, the agent of the railroad as a matter of convenience both for the railroad, the ship company, and the shipper signing what is in reality a separate bill of lading, which is attached to the railroad bill of lading. The railroad agent at Memphis, for instance, signs for the Mobile & Ohio and makes that carrier liable for the safe carriage of the shipment to Mobile, and by authorization of the ship company he also signs for the water carrier. But if the shipment were lost in passing from Mobile to Europe, the railroad company would be in no way responsible, nor would the ship company bear any portion of the loss if the traffic were burned on its movement from Memphis to Mobile. This practice of making a divisible bill of lading showing the ultimate destination of the shipment by water, both of the rates being sometimes stated separately—the rate to the port and the rate from the port, or only one rate being stated, that to the port—is a railroad practice instituted for the convenience of all concerned. The ship line is operated in physical connection with the rail line, but the rail

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In making

·rder, however, we recognize the right of a railroad line to reserve rtain boat lines certain of its water terminals, provided such .ations do not effect discrimination against traffic destined to waterside terminus and to be carried therefrom by other boat

' That the carriers defendant shall cease to discriminate in the nce by their agents of so-called through bills of lading on export 'c moving at their ship-side rates. We do not say that the car- defendant shall issue through bills of lading of the character ein described in the name of all ships or steamship companies, · that the service they give to the shipper in the interior who s one line of ships from the port shall be given to another ipper who wishes to use a different line of ships provided both es of ships submit to the same reasonable conditions imposed by e rail carrier. That is to say, if the rail carrier wishes authoriza- on in writing from the ship line to act for it, or wishes to impose a asonable charge for the making of the separate portion of the bill i lading applicable to the boat line it may enforce such regulations, ut without discrimination.

APPENDIX.

TARIFF PROVISIONS AS TO MOBILE & OHIO RAILROAD AND SOUTHERN RAILWAY DOCKS AT MOBILE.

Hosmer's I. C. C. No. A-116, giving commodity rates on imports from ship-side at Gulf ports to interior points.

Item 3 provides:

"The rates named herein apply from ship-side on traffic originating in foreign countries other than Europe, Asia, and Africa handled on through rates from port of import to final destination."

Hosmer's I. C. C. No. A-127 in Item 36 provides:

"Rates will not apply via the Mobile & Ohio except to Mobile, New Orleans, and Port Chalmette."

Item 42 has a similar provision as to the Southern Railway.

Supplement No. 3 of the same tariff, effective September 1, 1910, Item 36, provides:

"Rates will not apply via the Mobile & Ohio except to New Orleans and Port Chalmette except that the Mobile & Ohio will apply the rates on traffic arriving at Mobile via this line to ship-side *only* when delivered over wharves reached by the rails of the Mobile & Ohio."

Item 42 has the same provision as to the Southern Railway.

Hosmer's I. C. C. No. A-126, giving class and commodity rates on exports from interior points to ship-side at Gulf ports.

Item 38:

"Rates published in tariff will not apply via the Mobile & Ohio except to Mobile, New Orleans, Port Chalmette, and Knight's Key, except that the Mobile & Ohio will apply the rates on traffic arriving at Mobile via this line to ship-side *only* when delivered over wharves reached by rails of the Mobile & Ohio."

Item 47-A, same provision as to the Southern.

All of the above tariffs provide that "shipments transported under this tariff, in addition to the rates named, will be subject to the current rules and regulations of the

individual carriers parties hereto and which are lawfully on file with the Interstate Commerce Commission relating to terminal service, etc.

The Southern Railway by its individual tariff, I. C. C. No. A-4330, covering wharfage charges on coastwise export and import traffic, states in general rule No. 2:

"The Southern Railway Co. does not under this tariff obligate itself to provide wharfage, storage, or handling for property which has been transported, or is intended to be transported, over its lines beyond the reasonable capacity of its property and facilities.

"The Southern Railway Co. does not under this tariff hold itself out to be a public wharfinger, nor does it guarantee berths to vessels; and vessels reporting for loading or discharge (when berthed) will be berthed at proper piers in their order of priority."

This tariff also provides, in connection with table 3, wharfage charges on export and import shipments at Mobile. Rule 1:

"It is understood that as far as possible vessels will be given berths in the order of their application for same; that is, each in its regular turn; the Southern Railway Co. does not bind itself to berth vessels and will not be liable for damages if it should not do so, it being understood that certain berths are always reserved for its regular liners."

The Mobile & Ohio in its individual tariff, I. C. C. No. A-733, governing wharfage charges, etc., at Mobile, Item 14, provides:

"The Mobile & Ohio Railroad does not under Items 8 and 18 hold itself out to be a public wharfinger and does not obligate itself to provide wharfage or handling for property which has not been transported, or is not intended to be transported over its line; and as to the property which has been, or is intended to be, transported over its lines does not obligate itself to provide wharfage or handling beyond the reasonable capacity of its properties and facilities. All services undertaken to be performed by the Mobile & Ohio under these items are further subject to federal, state, and municipal laws."

Supplement 16 to the above Mobile & Ohio tariff, effective March 26, 1912, section 22, item 14-A, has the same provision as item 14 above quoted, but there is added the further provision:

"Traffic consigned to Mobile intended for delivery to vessels, barges, or water craft will be delivered over the Southern Railway—Mobile & Ohio Railroad docks—only to such vessels, barges, or water craft with which the Mobile & Ohio Railroad or Southern Railway has a working contract, either general or special. Such traffic intended for other vessels, barges, or water craft will be delivered at this company's regular freight depot, on its public-delivery tracks, on Mobile & Ohio Railroad tracks at city wharves reached by rails of the Mobile & Ohio Railroad, or when in carloads on regular interchange tracks with the Louisville & Nashville Railroad or N. O. M. & C. Railroad.

"Traffic reaching Mobile in vessels, barges, or watercraft, with which the Mobile & Ohio Railroad or Southern Railway has no berthing contract, either general or special, will not be received at the Southern Railway (Mobile & Ohio Railroad) docks, but will be received at this company's regular freight station, on its public receiving tracks, or at city wharves reached by the rails of the Mobile & Ohio Railroad, or when in carloads on regular interchange tracks with the Louisville & Nashville Railroad or N. O., M. & C. Railroad."

Section 22, item No. 7-F, has a provision as to the absorption of expense of receiving import freight from ship-side which is as follows:

"In the absence of rates published in tariffs enumerated above (Hosmer's Import Tariffs), domestic rates will apply on import traffic forwarded over the rails of the Mobile & Ohio Railroad from Mobile, and this company will absorb the cost of switching or drayage and the wharfage and handling charges shown herein or in tariffs of Southern Railway lawfully on file with the Interstate Commerce Commission, from ship's tackle and loading into cars when received from vessels discharging cargo over wharves reached by the rails of the Mobile & Ohio or the Southern."

No. 4399.

NEW ORLEANS BOARD OF TRADE, LIMITED,

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted April 4, 1912. Decided May 7, 1912.

Rate on pig iron of $3 per gross ton from Birmingham, Ala., to New Orleans, La., not found to be unreasonable or unjustly discriminatory.

John A. Smith for complainant.

Nelson W. Proctor for Louisville & Nashville Railroad Company.

Frank W. Gwathmey for Alabama Great Southern Railroad Company; New Orleans & Northeastern Railroad Company; Mobile & Ohio Railroad Company; and Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner:*

This complaint, although brought in the interest of all users of pig iron at New Orleans, is filed at the specific instance of Bancroft, Ross & Sinclair (hereinafter referred to as complainant), a company engaged in manufacturing this raw material into sugar mill and sawmill machinery at that place. The petition asks for a reduction in rate from $3 to $2.55 per gross ton on such of this raw material as is received from Birmingham, Ala., the latter figure being the average of the rates on pig iron from Birmingham to certain southeastern points, including New Orleans, shown in the following table:

Rates from Birmingham, Ala.

To—	Distance.	Rate per gross ton.	Rate per 100 pounds.	Per ton mile.
	Miles.		*Cents.*	*Mills.*
New Orleans, La.	355	$3.00	13.4	7.55
Jacksonville, Fla.	485	2.75	12.28	5.07
Charleston, S. C.	468	2.75	12.28	5.25
Savannah, Ga.	434	2.75	12.28	5.66
Brunswick, Ga.	443	2.75	12.28	5.55
Spartanburg, S. C.	360	2.75	12.28	6.83
Charlotte, N. C.	436	2.75	12.28	5.64
Macon, Ga.	256	1.65	7.36	5.75
Augusta, Ga.	337	2.00	8.93	5.30
Atlanta, Ga.	166	1.00	4.46	5.37
Nashville, Tenn.	207	2.00	8.92	8.61
Louisville, Ky.	394	3.00	13.4	6.80
St. Louis, Mo.	496	3.75	16.7	6.73
Cincinnati, Ohio	481	3.25	14.5	6.08

Of the points enumerated complainant meets competition with Atlanta in the sale of sugar-mill machinery (chiefly for export), and at certain times from Birmingham in the sawmill trade. St. Louis is a competitor, but more as a broker in machinery purchased in other cities than in that of its own manufacture. There is no competition with New Orleans from any of the other points in the above table. While not shown in the table, Chattanooga makes sawmill machinery; and Reading, Pa., is complainant's chief competitor in export business.

It is also alleged that the rate complained of unlawfully discriminates in favor of various articles manufactured from pig iron which are enumerated in the petition, and the rate applicable to which, in carloads, as a general rule is 120 per cent of the pig-iron rate. Defendants say that the rates on these manufactured commodities are made abnormally low to encourage industries in the south. Complainant does not manufacture them to any extent, and has not established that any material injustice results to its own interests by reason of the rates applicable thereto.

At the hearing complainant directed its chief attention to alleged competition from Birmingham in the sale of machinery in Mississippi. It was shown that in distributing machinery in that state Birmingham manufacturers pay a less rate on their machinery direct than the aggregate which complainant pays on its pig iron to New Orleans and on its machinery thence to the same destinations. It also contends that the rate on coal of $1.25 per ton to New Orleans increases this disadvantage. It appears that to practically all points in Louisiana complainant can distribute its machinery at a considerably less aggregate rate than the machinery rate from Birmingham. Approximately 60 per cent of complainant's machinery is sold west of the Mississippi River, in Louisiana and Texas; 20 per cent east of the river in Alabama, Georgia, and Florida; and 20 per cent is exported. On export business the rate of 19 cents on machinery from Birmingham to New Orleans is 5.6 cents higher than the rate on pig iron to New Orleans. Apparently, therefore, complainant's total in-and-out rate is higher on machinery manufactured from Birmingham pig iron than the machinery rate from Birmingham direct to the same destinations only on the 20 per cent or thereabouts of its output which is sold east of the Mississippi River. It is apparent that complainant's disadvantage in this territory is one of location, as the New Orleans product is backhauled into territory common to New Orleans and Birmingham, where Birmingham's advantage over New Orleans increases with the latter's outbound haul.

The only question before the Commission, however, is the reasonableness of the rate on pig iron from Birmingham to New Orleans. Defendants state that the New Orleans rate, under an adjustment

of many years' standing, is the same as the rate from Birmingham to Louisville and 50 cents per ton higher than from Birmingham to Memphis, and therefore that any reduction from Birmingham to New Orleans would be automatic in its effect upon the Louisville and Memphis rates. The Memphis rate is made by the Frisco, the distance being 251 miles via that line. From their respective locations it is manifest that any effect a reduction in the rate to New Orleans might have upon the Memphis and Louisville rates must result from adherence to an established custom rather than from any basic connection between the rates to the three points. It is obviously unnecessary to repeat here the reasons for our previous findings to the effect that an unreasonable rate may not be permitted to stand merely because if reduced other readjustments might follow. Whatever the carriers might do in this respect, our duty in each case is to inquire into the reasonableness and justness of the rate under immediate consideration.

Defendants also state that formerly the southeastern rates on pig iron from Birmingham fluctuated with the market price, and whether or not due wholly or in part to that cause, changes in the New Orleans rate from Birmingham have been as follows: October 1, 1888, \$2.50; January 1, 1893, \$2.55; April 12, 1894, \$2; September 16, 1895, \$2.50; May 30, 1897, \$2; February 6, 1899, \$2.50; June 21, 1899, \$3; October 1, 1900, \$2.50; September 15, 1902, \$3; October 10, 1903, \$2.50; March 1, 1906, \$2.75; and February 1, 1907, \$3.

While some of the rates to the other southeastern points shown herein are relatively lower than to New Orleans, it is not established that they are made by the present defendants, or that the circumstances and conditions under which made correspond substantially to the conditions of transportation between Birmingham and New Orleans. Comparing the rate to New Orleans with rates from Birmingham to cities similarly situated with respect to basing lines, such as Memphis, St. Louis, Louisville, and Cincinnati, to the last three of which certain of these defendants make or influence the rate, we can not find that the New Orleans rate is unreasonably high. Considering the record as a whole, it is our view that the complaint should be dismissed, and it will be so ordered.

No. 4006.

MINNEAPOLIS TRAFFIC ASSOCIATION OF THE CITY OF MINNEAPOLIS

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

No. 4119.

KANSAS CITY TRANSPORTATION BUREAU OF THE COMMERCIAL CLUB ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

No. 4197.

NATIONAL IMPLEMENT & VEHICLE ASSOCIATION ET AL.

v.

OREGON SHORT LINE RAILROAD COMPANY ET AL.

No. 4265.

SPRINGFIELD TRAFFIC BUREAU OF THE JOBBERS' & MANUFACTURERS' ASSOCIATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted January 25, 1912. Decided May 7, 1912.

In the proceeding *In the Matter of Reduced Rates on Returned Shipments*, 19 I. C. C., 409, the Commission directed the cancellation of half or reduced rates based upon the return character of the shipments to which applied. The present complainants seek the reestablishment of these rates upon the contention that the shipments are inherently of low value. Difficulties in practical application of such rates discussed, and finding made that the Commission is not prepared to differentiate between new and old or secondhand articles or to lay down the principle that value is the controlling element in ing rates. Complaints dismissed.

J. A. Hosp and *W. P. Trickett* for complainants in No. 4006.

H. G. Wilson and *H. G. Krake* for complainants in No. 4119.

C. E. More and *S. D. Snow* for complainants in No. 4197.

S. C. Bates for complainants in No. 4265.

W. F. Dickinson and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

C. C. Wright for Chicago & North Western Railway Company.

Henry G. Herbel for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

F. C. Dillard and *H. A. Scandrett* for Union Pacific Railroad Company and Oregon Short Line Railroad Company.

H. A. Scandrett for Harriman lines.

J. D. Armstrong for Great Northern Railway Company, Northern Pacific Railway Company, and Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

Wm. Ellis and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

R. V. Fletcher for Illinois Central Railroad Company.

Geo. W. Seevers and *L. B. Byard* for Minneapolis & St. Louis Railroad Company.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

F. H. Wood for St. Louis & San Francisco Railroad Company.

A. A. Johnson for Kansas City, Clinton & Springfield Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner:*

These complaints, involving the same general principles and subject matter, will be disposed of in one report.

The proceedings before the Commission *In the Matter of Reduced Rates on Returned Shipments*, 19 I. C. C., 409, followed protests from various shippers against the cancellation of such reduced rates by the carriers, on May 1, 1910, upon promulgation by the Commission of paragraph 67 of its Tariff Circular 17–A, which reads as follows:

A rule providing for the reconsignment or return free or at reduced rates of articles damaged in transit is not improper if it is so framed and applied as to prevent abuses or improper practices under it. The practice of returning at reduced rates articles that have been delivered into the possession of consignees and have become shopworn or have gotten into a state of disrepair through use is neither proper nor free from unjust discrimination. A rule according reduced rates on return shipments is proper only in so far as it applies to the return of shipments that are received by the consignee in bad order or are refused by consignee without examination. As to shipments that are not in closed packages and thus are open to immediate inspection, the rule should provide that in order to secure reduced rates on return movement the goods shall not have left the

possession of the carrier before such claim is made. As to goods that are in closed packages, the rule should provide that in order to secure reduced rates on return movement such goods must be returned to the carrier within ten days.

The establishment and growth of these rates are described in the following extract from the Commission's report in that proceeding:

The returned-shipment privilege seems to have been originated for the purpose of assisting the agricultural interests. Farm implements and machinery often prove defective or break down while in use, and if full tariff rates must be paid for their transportation to a point where repairs can be effected, the farmer is subjected to a serious handicap. Rules were therefore adopted permitting the return of agricultural implements, vehicles, and similar articles at one-half the regular rates.

Through the operation of competitive forces the return-shipment rules became increasingly liberal and were gradually enlarged to cover the return of freight of every character and for every purpose. By reference to the provisions of the western trunk line circular quoted above it will be observed that, while the rules of the various carriers are not uniform, the general effect is to permit the return of freight to the original point of shipment or to branch houses of manufacturers at one-half the rates applying in the direction of first movement. No time limit is provided, reference to original outbound shipments is not always required, nor is it essential that the return movement be made via the line over which the initial shipment was carried. The southwestern lines circular, on the other hand, requires that the returned shipment be made within a year following the outbound movement in order to enjoy the lower rate, but this limitation does not apply to agricultural implements, vehicles, and wagons. Other circulars of the southwestern lines carrying similar rules establish a four-year limit for the return of agricultural implements and vehicles.

In that report also the Commission adhered to the principles announced in paragraph 67, holding that half or reduced rates based merely upon the return character of the shipments were unlawful, because in violation of section 2 of the act, in that the charge was less on such shipments than on original traffic, which, from a transportation standpoint, must be considered to move under substantially similar circumstances and conditions of carriage. The Commission did not, as some of the present complainants seem to think, direct the carriers to restore the half or reduced rates on this class of traffic upon the theory that it comprised entirely articles of low value when it said it would "expect carriers to conform to the views herein expressed." That statement referred to the general finding that the tariffs carrying these reduced rates should be canceled, and the reference to rates based upon value was merely a suggestion of what the carriers might do of their own volition. There was no suggestion of a requirement in that respect.

Complainants in the present proceedings seek an order in reestablishment of these half rates, based upon the inherent lower value of the shipments to which applied. While the greater part of

the testimony, and perhaps the chief concern, is from the agricultural implement and vehicle interests, the complaints specifically embrace groceries, dry goods, and other commodities. Agricultural implements and vehicles will be taken as representative for the purposes of this report.

It is a custom of the trade to sell farm implements and vehicles under guaranty as to material, workmanship, and practical operation, and defective machines or parts are replaced by the manufacturer. From 3 to 5 per cent of all farm implements, or parts, are constantly being returned to the factory for repair or other purpose, and from 60 to 90 per cent find their way back in course of time. In many instances the return of articles alleged to be defective is for the one purpose of preventing fraud upon the manufacturer and in order that any real defect in material or construction may be corrected in other machines. Many of such articles have no inherent value except as scrap. One witness testified that buggy wheels worth $12 a set are sold to local blacksmiths at 30 cents apiece, upon confirmation of the shipper's allegations of defective material or construction.

It is by no means the fact, however, that the great bulk of shipments fall within this class. It is frequently cheaper to return articles or parts for repair, or it may be that the required workmanship or finish can not be had from local blacksmiths. Old machines, especially threshers, often are returned in part payment for new; machines are bought in by the manufacturer under foreclosure proceedings, upon inability of the farmer to meet payments; or perhaps the pattern of certain implements is obsolete and unsalable. About 25 per cent of the total business of one of these complainants is in rebuilding threshing machines taken in trade.

The difficulty of adequately describing such shipments in the proper policing of the reduced rate is recognized by all parties. One of the suggested rules provides for the half rate on "agricultural implements and articles classified as such, or parts thereof, defective or damaged, released value not to exceed 50 per cent of invoice value of the same goods if new," or "value declared by shipper not to exceed $15 per ton." Another reads, "agricultural implements, vehicles and parts thereof, broken, damaged, defective, or in an obviously deteriorated condition * * * valuation declared not to exceed $20 per net ton." The Kansas City interests, which represent shippers of commodities in general, suggest that the rates apply to "articles damaged, defective, depreciated in value as much as 50 per cent from original cost, offered for shipment to a point for repair; to be put in a salable condition; to be destroyed; to be scrapped" (with appropriate released valuation clause).

All of the above are necessarily elastic terms, susceptible to much contrariety of opinion. Vehicles of a certain standard of elegance may be deemed to be "damaged" with slight scratches on the enameled surface, whereas considerable defacement or actual minor damage would not bring heavy wagons within the class. When an article is "defective or in an obviously deteriorated condition" is a matter of individual judgment, and whether it is "depreciated in value as much as 50 per cent or more from original cost" is yet more difficult, if not impossible, of uniform or even individual determination by the carrier. The situation would be more confusing should the rule apply to all commodities in transportation, as not only these complaints but the principle involved therein would seem to require.

But the fundamental question in these cases is whether the Commission should establish these half rates because alone of the inherent value of the freight. In considering this phase, such shipments, their return feature having been eliminated, should be viewed just as any other original freight, without regard to the cause of depreciation of the article or the motive in transportation except as the latter consideration may affect rates on traffic in general. In this view shopworn and other unsalable goods would be included within the class of traffic entitled to the half rate with articles returned for repair, and the principle would extend to secondhand goods, which frequently exceed in value like articles new but of cheaper grade. The effect of granting the prayers of these complaints, therefore, would be to commit the Commission to the doctrine that rates on all commodities should be made with reference to value as the controlling element. We have heretofore refused to announce that principle. In *Union Made Garment Mfrs. Asso.* v. *C. & N. W. Ry. Co.*, 16 I. C. C., 405, where the contention was that cheap cotton garments should not be classed with high-grade woolen garments of the same character, we said:

> While the carriers themselves may be able to select certain of these articles and apply to them a particular rate for some particular purpose, it is difficult to see how this Commission could attempt to lay down any such rule for general application, or how, having accorded to these garments the rating asked for, it could decline to extend the same treatment to other cotton garments of substantially the same kind. We are apprehensive that an attempt to do so would lead to a more unsatisfactory condition, on the whole, than the present. * * * Theoretically, this kind of classification may be correct; but the carriers have always earnestly insisted that it is not practicable, for the reason that it is not possible to ascertain and apply without discrimination the test of value. They urge that in order to secure the observance of the rate it is necessary that the thing transported shall be designated according to some visible token, which can be readily seen and distinguished, so that frauds upon the part of the shipper can be easily detected and prevented. This subject has previously referred to by the Commission. While we feel that the diffi-

culties suggested by the carriers may at the present time be overstated, we are not prepared now to establish by our order that system against their protest.

In *National Machinery & Wrecking Co.* v. *P., C., C. & St. L. R. R. Co.*, 11 I. C. C., 581, we had under consideration the contention that the scrap-iron rate should have applied upon a secondhand dynamo, instead of the rate on dynamos, the intention of the shipper having been to sell the dynamo as scrap. In reference to its secondhand character we said:

Much might be said in favor of a rule which would apply a lower rate to secondhand dynamos when shipped from the electric-light station to the repair shop than is charged upon either a new or secondhand dynamo when sent to the station for use; but that is a question of policy for the railways themselves. This Commission can not say that it is unjust or unreasonable to require the same charge for the transportation of the new and the secondhand dynamo. * * * The second question is an entirely different one. The dynamo is no longer valuable as such; it has ceased to be an electric machine and has become a combination of copper, brass, and iron scrap. * * * Dynamos are first class. Assuming, without expressing any opinion upon that subject, that this rating of dynamos is just and reasonable, it must be upon the ground that the dynamo is a valuable and delicate piece of mechanism which can afford to pay a high rate of carriage and which requires great care in handling. Neither of these things can be affirmed of that dynamo when it has become junk. Its value is no greater than the selling price by the pound of the metals which it contains, nor indeed as great, since a certain amount of labor must be expended before even that price can be obtained. * * * It was said by the same railway witnesses that a steam engine, or the flywheel of an engine, or a steam boiler, might be shipped at the scrap rate without being broken in pieces, provided it was manifestly of no further use for its original purpose. In the same way, we think that it should be possible to ship as junk a dynamo which has been bought for that purpose and which has actually no other value. Such a dynamo need not be boxed or otherwise prepared for shipment, and it should, of course, bear the rate applicable to the highest class metal used in its construction.

We are convinced that a departure from these findings would, considering the great variety of commodities, lead us into a refinement in valuation both impracticable and hazardous in application. Moreover, we are not prepared to lay down the principle that old or secondhand articles must be treated differently from new or that value is the controlling element in making rates. Such of these articles or parts as are in fact scrap are entitled to the scrap rate, but if they have any value as the articles which they originally purported to be, we do not feel that we can require the carriers to transport them at other than the regular tariff rates applicable to the new or originally transported article. It is one thing for carriers to grant a privilege, if based upon proper considerations, and quite another for the Commission to order it; and the carriers themselves may not unlawfully discriminate in this respect. Considering these records as a whole it is our view that the complaints should be dismissed. It will be so ordered.

No 4364.

RED RIVER OIL COMPANY ET AL.

v.

TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted May 3, 1912. Decided May 13, 1912.

On complaint that concentration charges, provided for by additions to local rates that had been maintained for a substantial period as reasonable and satisfactory, and forfeited if outbound shipments are not tendered to the same carrier that transported the inbound shipments, are unreasonable and unjustly discriminatory; *Held*, That while the Commission does not condemn reasonable, nondiscriminatory, and properly applied transit rates and privileges, or a reasonable and nondiscriminatory charge for the additional service performed in connection with a transit privilege, it is unreasonable for carriers to add anything to their reasonable rates as a penalty to be forfeited if the outbound shipment is not delivered to a certain carrier; and *Held, further*, That it is unjustly discriminatory for carriers to assess concentration charges at competitive points different from or greater than they contemporaneously assess at noncompetitive points.

Emerson Bentley for complainants.

Frank Koch and *Henry G. Herbel* for Texas & Pacific Railway Company.

E. C. D. Marshall and *Wise, Randolph & Rendall* for Louisiana Railway & Navigation Company.

Victor Leovy and *F. C. Dillard* for Morgan's Louisiana & Texas Railroad & Steamship Company.

S. F. Senne for Louisiana & North West Railroad Company.

Martin L. Clardy and *Henry G. Herbel* for St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner:*

Complainants are Louisiana corporations engaged in the manufacture of oil, meal, cake, and other products of cottonseed at Alex-
ia and Natchitoches, La. It is alleged that so-called concentra-
rges exacted on shipments of cottonseed from Louisiana
andria and Natchitoches are unlawful and unjustly

herein are in cents per 100 pounds.

The initial defendant, the Texas & Pacific Railway Company, provides distance rates to oil-mill points in Louisiana, including Alexandria and Natchitoches, applying on cottonseed and cottonseed products.

Effective October 7, 1904, pursuant to an order of the railroad commission of Louisiana, the Louisiana state rates on cottonseed, carloads, were increased 3 cents to oil-mill points on the Texas & Pacific Railway in Louisiana by the following provision:

Refer to herein-described tariff, as amended, and increase rates provided therein 3 cents per 100 pounds on cottonseed, carloads, to all oil-mill points on the Texas & Pacific Railway in Louisiana, except Shreveport, La., which is now provided for on page No. 3 of original tariff, Cinclare Plantation, La., which is provided for below, and New Orleans, La.

Subsequently Bunkie, Longbridge, New Roads, and Boyce, La., were added to the excepted points.

It was provided:

When the product is reshipped from the oil-mill points, over the Texas & Pacific Railway, the "net rates," i. e., 3 cents per 100 pounds less than the "gross rates" shall be protected through claim account and as a basis for settlement of such refund claims, it is understood and agreed that one ton of product (other than hulls, cotton linters, and ashes) out is equivalent to two tons of cottonseed inbound. * * *.

These rates were first made applicable on interstate traffic March 2, 1908, and are still in force.

The Louisiana Railway & Navigation Company provides concentration rates on cottonseed from various points in Louisiana to Alexandria and Natchitoches which are in substance and effect the same as those of the Texas & Pacific.

There are no tariffs on file with us providing so-called concentration charges and refund thereof on the lines of the Louisiana & Arkansas Railway or the Louisiana & North West Railroad. The record shows that a state tariff of the Louisiana & North West road contains the concentration-charge provision.

There is no tariff on file with us showing concentration charges at Alexandria and Natchitoches on part of the Chicago, Rock Island & Pacific Railway Company. It appears that it issues state distance rates on cottonseed between points on its lines in Louisiana, with the concentration provision.

Morgan's Louisiana & Texas Railroad & Steamship Company named rates on cottonseed, carloads, from joint track stations in Louisiana to Alexandria, La. These rates were increased 3 cents, the increase to be refunded when 50 per cent of the manufactured product was reshipped over that line. The application of these rates on interstate traffic has been canceled. This company alleges that the provision for refund on reshipment of the cottonseed products

has been applied only on state traffic and in a few instances to shipments to New Orleans on local bills of lading marked "for export," and that it has never been applied on shipments via New Orleans to foreign destinations on through bills of lading.

Traffic from Louisiana points to New Orleans for export, whether on local bills of lading or on through bills, is subject to our act and to our jurisdiction. *In the Matter of Rates, etc., of the Louisiana Railway & Navigation Co. with Respect to Transportation of Sugar*, 22 I. C. C., 558; *Texas & Pacific Ry. Co.* v. *Railroad Commission of Louisiana*, 183 Fed., 1005; *Southern Pacific Terminal Co.* v. *I. C. C. & Young*, 219 U. S., 498.

The St. Louis, Iron Mountain & Southern Railway Company names rates on cottonseed, carloads, from points in Louisiana to Alexandria, subject to the concentration charge.

Certain tariffs referred to in the record show that when the concentration charges were established the gross rates thereunder were with substantial uniformity 3 cents higher than the rates for the same distances into noncompetitive points where the concentration charge did not apply, and that generally the concentration charge was provided for by merely adding 3 cents to the previously existing rates.

Complainants cite these concentration provisions and allege: (*a*) That they are of no benefit, but a scheme, device, or system whereby the carriers seek to force complainants to ship their cottonseed products over the same line via which the cottonseed is received, or be subjected to a penalty. (*b*) That such concentration charge or refunding clause is wholly in the interest of the carriers and for the sole purpose of enabling them to control the product of raw material originating on their separate lines and to prevent complainants from using competitive lines whenever it may be to their interest so to do in the distribution of their products. (*c*) That complainants are thereby restricted in their markets. (*d*) That the concentration charge is discriminatory in that it is not assessed at noncompetitive points. (*e*) That the concentration charge is not promptly refunded. (*f*) That the necessary evidence, i. e., expense bills and bills of lading, must be taken from complainants' files. (*g*) That the concentration charge is contrary to the spirit and purpose of milling-in-transit privileges, in that transit privileges usually contemplate a through rate from point of origin to final destination, the commodity from the milling point going forward at the balance of the through rate. (*h*) That net rates on cottonseed into milling points are unreasonable without the additional concentration charge.

No specific testimony was submitted in reference to the situation at Natchitoches, but it was shown that the testimony in reference to Alexandria was applicable to Natchitoches.

Alexandria is reached by the lines of the Chicago, Rock Island & Pacific Railway, Louisiana & Arkansas Railway, St. Louis, Iron Mountain & Southern Railway, Louisiana Railway & Navigation, Morgan's Louisiana & Texas Railroad & Steamship, and the Texas & Pacific Railway companies. Natchitoches is on the lines of the Louisiana & North West Railroad and the Texas & Pacific Railway companies.

Complainant Red River Oil Company obtains all its cottonseed from points within the state of Louisiana. From 60 to 70 per cent of the products is exported. A small proportion of the remainder is shipped to points in Ohio and Illinois. Complainant, Sonia Oil Company, ships 75 per cent of its products to Louisiana points, 15 per cent is exported, and the remainder is consumed locally or is shipped to interstate points. The majority of its cottonseed is obtained from Louisiana.

The Red River Oil Company has obtained seed from points on the lines of all of the defendants except the Louisiana & Arkansas and the Iron Mountain. The fact of not obtaining seed from points on the Iron Mountain presents one of the burdens under which complainants contend they labor. Many points at which there is market for products are located on lines from which no seed is obtained. The market is restricted by the refunding provision. For example, the price at Galveston might be such as to make it profitable to forward products to that point if it were not for the fact that the refund would thus be lost. The price at Westwego might be greater than that at Port Chalmette, but if there was not sufficient inbound billing on hand to cover the shipment of product to Westwego, the higher price could not be availed of without forfeiting the refund. In some instances consignees request delivery at a specific point, and complainants have no inbound tonnage from the road reaching that point. In other words, the imposition of the concentration charge hampers complainants in marketing their products and tends to confine them to markets as to which the concentration charge will be refunded.

It appears that the charge has a tendency to lessen defendants' desire to furnish adequate service. The rate out on the product may be less than the amount of the refund. If the product is not transported at all by the road that must return the concentration charge it is better off to the extent of the amount of the refund and is not compelled to perform the service of hauling the product. In addition, complainants are unable to choose the road over which they shall ship the product. Although they may wish to avail themselves of better and quicker service by a particular line their desire to so ship must be weighed against the concentration charges refundable by some other line.

It is testified that a road having concentration charges in its possession is not so diligent in furnishing equipment for the shipment of products on which the charges would be refunded as for the shipment of products on which no refund will be made. Rule 98 of the rules and regulations of the railroad commission of Louisiana provides:

Whenever a party has received products for concentration or manufacture at rates authorized or established by the railroad commission of Louisiana providing for refunds to be made when the original product or a certain percentage of the manufactured product is reshipped via the carrier on whose line the shipment originated and the said party tenders to the originating carrier the return shipments, either of the original, or the manufactured products, at the rate of two carloads every five days, and the said carrier fails to furnish cars for the loading and movement of such shipments, then the party receiving the shipments for concentration or manufacture may ship via another line, and shall be entitled to all refunds, which may be due when such shipments are tendered.

Complainants contend that this rule is not observed.

Even though the product is shipped out via the road originating the seed difficulty is encountered in obtaining the refund. Complainants must furnish the inbound expense bills on seed and outbound billing on the products. Frequently controversy arises, long delays occur and much correspondence is had before the refund is obtained.

The Louisiana Railway & Navigation Company contends that, considering switching and car rental at New Orleans, Alexandria mills are on a parity with those at New Orleans at which concentration charges are not applicable. This argument suggests, as does also the entire arrangement, an effort to equalize the commercial advantages and disabilities of the several mills. That neither the carriers nor this Commission can lawfully so adjust rates is no longer open to argument.

On September 9, 1908, the railroad commission of Louisiana received a petition from a number of cottonseed-oil mills located at various points in Louisiana asking that the provision for concentration charges on cottonseed shipped to milling points be rescinded. A hearing was had and the commission stated that it could—

not find any justifying reasons for allowing railroads to collect concentration charges at noncompetitive points; but the evidence is not sufficient to show that the concentration charges at competitive points are unreasonable, unjust, or burdensome upon shippers or consignees when such charges are promptly returned to the proper party upon receipt of the correct outbound tonnage.

Thereupon that commission ordered, effective October 25, 1908, that all concentration charges on cottonseed at points in Louisiana where actual water or rail competition does not exist be abolished and that the net rates then in effect be charged on all inbound and outbound shipments of cottonseed and cottonseed products. It was

further ordered that the question of abolishing concentration charges at competitive points be deferred for further investigation.

On December 12, 1905, the railroad commission of Louisiana established rates on cottonseed and cottonseed products transported between points in Louisiana on the Texas & Pacific Railway. The mileage rates so established had coupled with them the provision that they would apply when 50 per cent of the products of the seed hauled in, other than linters, hulls, and ashes, was shipped out via the Texas & Pacific Railway; otherwise the rates on cottonseed would be 3 cents higher. This provision applied on all seed except that shipped into New Orleans or Gretna. The Texas & Pacific Railway Company sought to enjoin the enforcement of that order on the grounds that the rates were unreasonable and unjust. The case was referred to a special master who found that the rates were not fair, just, and reasonable.

The circuit court sustained exceptions to the master's report. Thereupon the railroad commission of Louisiana adopted a resolution, April 28, 1910, in which it was stated that it considered an adequate and reasonable concentration charge at points other than strictly noncompetitive points is a proper, legal, and just charge and should be maintained, and in consideration of the Texas & Pacific Railway Company's complying with its order abolishing concentration charge of 3 cents on cottonseed at noncompetitive points, declared it to be its fixed and definite policy to maintain an adequate and reasonable concentration charge on cottonseed products at all points except such as are strictly noncompetitive, as it believed and considered such a charge reasonable, just, and legal as a proper protection to the railway company at competitive points. The circuit court of appeals, in *Texas & Pacific Ry. Co.* v. *R. R. Com. of La.*, 192 Fed., 280, on November 22, 1911, affirmed the finding of the circuit court, and held that the rates were not shown to be confiscatory, unjust, or unreasonable.

On April 23, 1912, after this case had been heard, the railroad commission of Louisiana issued its order No. 1403, effective May 15, 1912, in which it is stated that after exhaustive investigation that commission finds that while the concentration arrangements did at one time receive the indorsement of a majority of the cottonseed oil mills in that state and were accordingly approved by that commission, the oil mills now are generally opposing a continuance of the concentration charges; that there has been much abuse of the privilege by the carriers; that the manner in which it has been applied is found to be unjustly discriminatory; and in which it is ordered that all concentration charges on cottonseed now in effect in Louisiana shall be canceled and abolished, and the present rates less the concentration charges established as local rates to the mill points. The

order recites that on account of the litigation pending in the United States courts between the Louisiana commission and the Texas & Pacific Railway Company involving rates on cottonseed and cottonseed products between points in Louisiana, the Texas & Pacific Railway Company is exempt from the provisions of the order until further ordered.

This order of the railroad commission of Louisiana is not officially a part of the record in this case, but we are furnished copies of it through the courtesy of that commission.

Morgan's Louisiana & Texas Railroad & Steamship Company, the Louisiana & Arkansas Railway Company, and the Chicago, Rock Island & Pacific Railway Company demur to our jurisdiction. We have already seen that these roads, and also the Louisiana & North West Railroad Company do not provide in tariffs on file with this Commission concentration charges via their roads applicable on interstate traffic. Manifestly these carriers can not lawfully apply any rates or refunds to shipments to interstate points, or to New Orleans for export, which are not shown in tariffs on file with this Commission. In *St. Paul Board of Trade* v. *M., St. P. & S. S. M. Ry. Co.*, 19 I. C. C. 285, we said:

> In this connection it may be well to call attention to the fact that the less than carload shipments of butter and eggs from Minnesota points into Alexandria and Paynesville, as well as from the same points into the twin cities, apparently move under state rates that are not published with this Commission. At this late day in the discussion of such matters it ought not to be necessary to point out to the defendant that its attempt to connect outbound interstate movements with inbound movements to a concentrating point under rates not on file with this Commission is unlawful. Its outbound 20-cent proportional rate can lawfully be limited only to inbound movements under rates on file here. This defect in the present practice must at once be corrected.

At some competitive points one carrier provides for the concentration charge and another carrier does not. There seems to be no provision for preserving the identity of the seed brought in by the respective carriers, or for preventing substitution of the tonnage moved by the one carrier for that moved by the other. The shipper at that point is therefore able to utilize all possible inbound billing for refunds from the carrier that has the concentration charge and to supply his other customers from the seed which bears no concentration charge, with apparently no pretense of keeping the inbound tonnage upon which refund is due separate from that upon which no refund applies.

In *In the Matter of the Substitution of Tonnage at Transit Points*, 18 I. C. C. 280, we said:

> At Memphis a peculiar situation exists. The rates for the transportation of cotton to that city are higher than net rates, a refund being given upon proof of shipment of a like weight of cotton via the line of the same carrier. Expense bills for inbound

shipments are held by the cotton factors or commission merchants representing the growers. Expense bills for outbound shipments are held by the buyers representing the consumers. No refund can be secured without the presentation of expense bills for each movement. The result is that many expense bills are sold by the buyers to the factors for an amount equal to one-half of the refund to be gained. Some factors remit the refund to their principals in this country; some are able to remit only a portion through having to buy outbound expense bills. Other factors retain the refunds, leaving their principals to pay the gross rates to Memphis. The entire situation is unsatisfactory and should be cured by the installation of a system of flat rates.

On page 295 "Transit as a Railroad Policy" was referred to:

One striking fact developed by this inquiry is that the transit privileges have been needlessly multiplied by the carriers. The interest which prompts this needless extension of the privilege is apparent. A carrier bringing raw material to a competitive transit point desires always to make certain that the product of such raw material shall go forward by its line. The most evident method of securing this result is to collect something more than the net rate for the transportation of the raw material to the transit point upon delivering such raw material to the industry, the excess collection to be credited upon the rate for the forwarding of the finished product from such point. In such cases it is evident that the industry must pay a penalty if it uses any other means of transporting the finished product than the one provided by the carrier which transported the raw material. An analysis of the transit tariffs filed with us shows that the arrangement is in many cases not a privilege at all, but a burden upon the industries to which it applies. Such an arrangement frequently amounts to a requirement by the carrier that the industry shall in advance put up a bond that the finished product shall be forwarded by such carrier's line.

Two mills located at the same point may each tender to the same carrier a carload of cottonseed meal weighing 40,000 pounds, billed to New Orleans for export. If one of the mills has inbound billing of that carrier covering 80,000 pounds of seed, its car of meal will be charged $40, less refund of $24, or a net charge of $16, while the car of the other mill which has not the inbound billing of that carrier is charged $40 for exactly the same service.

In *In the Matter of Reduced Rates on Return Shipments*, 19 I. C. C., 409, it was said:

If the fact that a consignment of goods has once been shipped at full tariff rates is entitled to consideration in connection with the fixing of rates for a subsequent movement, why should there be any limitation upon the direction of the new movement? The carrier should be ready to apply half rates to the second shipment, whether or not it is in the direction of first movement.

In this connection reference was made to a decision of the Supreme Court of the United States in *A. & V. Ry. Co.* v. *Mississippi R. R. Comm.*, 203 U. S., 496. In that case the Alabama & Vicksburg Railway made what is called a rebilling rate of 3½ cents to Meridian, applicable only in case of inbound shipments over the Vicksburg, Shreveport & Pacific Railroad. But instead of applying it solely as a rebilling rate, the Vicksburg merchant who received a carload of grain or grain products over the Shreveport road was permitted to either forward it over the Alabama & Vicksburg to Meridian, or at

any time within 90 days to send in lieu thereof a similar carload, no matter whence received, from Vicksburg to Meridian at the same rate. The railroad commission of Mississippi made an order that all grain or grain products shipped from Vicksburg to Meridian should be at the same rate, 3½ cents. The Supreme Court held that when the Vicksburg Company voluntarily established a local rate of 3½ cents from Vicksburg to Meridian to those who within the 90 days made a shipment over the Shreveport road, it estopped itself from complaining of an order making that rate applicable to all shipments, no matter whence they came, and in favor of all merchants, whether those shipping over the Shreveport road or others.

Once let it be conceded that the inbound and outbound movements are separate and distinct, and the impropriety of applying any rates other than the regularly established local rates is obvious. *In the Matter of Reduced Rates on Returned Shipments, supra. G. C. & S. F. Ry. Co. v. Tex.*, 204 U. S., 403.

In *In the Matter of Substitution of Tonnage at Transit Points, supra*, we said:

> At none of the large warehousing markets are the difficulties in the way of the adoption of a flat-rate system any greater than were those presented at Missouri River points some years ago, when the Commission condemned the unlawful arrangement of rates on grain. As a result of the Commission's action the full local rates upon grain to these points are now paid, regardless of the final disposition of such grain. Outbound shipments of grain from these points are carried at a flat rate regardless of the point of origin, providing the grain be "from beyond."

In *Bascom Co. v. A., T. & S. F. Ry. Co.*, 17 I. C. C., 354, defendant had a proportional rate of 10 cents on shipments from El Paso, Tex., to Las Cruces, N. Mex., applicable only on shipments that had reached El Paso over its own rails, and at the same time maintained a rate of 30 cents on shipments that reached El Paso over competing lines. The Commission said:

> Nothing can be clearer than that any basis for making charges for a new and independent local movement to Las Cruces must be available alike to all shippers regardless of any previous act of transportation.

There is a long-established and somewhat general practice of permitting milling in transit, in connection with which the local rate to the mill point is charged on inbound shipments, and when the product is shipped out those local charges are reduced in specified amounts, thus making the through charge less than the aggregate of the intermediate rates. Under that plan the carriers, in effect, pay a premium from their presumably reasonable local rates in consideration of receiving the outbound shipments. Those instances differ materially from the situation we are now considering, in which the local rates, which were apparently satisfactory and presumably reasonable, were increased for the purpose of placing an additional sum in the custody of the carrier as a guarantee that if it were not given the

outbound shipments the excess charge would be forfeited. In the one instance the carrier pays from its revenues a premium in consideration of the outbound shipment; in the other case, the shipper is penalized by the forfeiture of his deposit if he does not give the outbound shipment to that carrier.

We are not to be understood as condemning reasonable, nondiscriminatory, and properly applied transit rates and privileges, or as condemning a reasonable and nondiscriminatory charge for the additional service performed in connection with a transit privilege, but we are of the opinion, and find, that it is unreasonable for defendants to add to their reasonable rates any sum as a penalty to be forfeited if the outbound shipment does not move over the same line which hauled the inbound shipment.

As referred to herein competitive points are those at which there is competition between two or more carriers, and noncompetitive points are those at which there is absence of competition between carriers. The shipper who is located at a competitive point is just as much entitled to nondiscriminatory rates as is the shipper who is located at a noncompetitive point, and a shipper at a competitive point may not be penalized under a transit privilege or rate adjustment beyond the extent of reasonableness, or beyond the extent to which competing shippers at noncompetitive points are likewise penalized. It is our opinion, and we find, that it is unjustly discriminatory for defendants to assess on interstate or export traffic concentration charges at competitive points different from or greater than those which they contemporaneously assess at noncompetitive points.

It was stated in the testimony that some of the defendants considered the current rates on cottonseed, divorced from the concentration or refunding clause, as too low. Inasmuch as the rates are distance rates, they must be as reasonable for a given service to a competitive point as for the same service to a noncompetitive point.

It was testified on behalf of the Louisiana Railway & Navigation Company that if flat rates were established to Alexandria endeavor would be made to make those rates somewhat higher than the current rates. As previously stated, complainants allege that the net rates on cottonseed into milling points are unreasonable without the additional concentration charge. It is also stated in the petition that the complainants do not attack the reasonableness *per se* of the outbound rates from mill points to final destination. No testimony was offered as to the unreasonableness *per se* of any rates and we have, therefore, no foundation for a finding on that subject.

As has been seen, some of these defendants have applied to interstate or export shipments concentration charges not contained in tariffs on file with us. An order to cease and desist from such a practice should not be necessary. The transit privileges and charges

thereunder on interstate or export shipments must be clearly and definitely shown in tariffs published and filed in conformity with the requirements of section 6 of the act, and they should conform to the views herein expressed. Assuming that defendants' tariffs will be promptly brought into conformity with the law and these views, we will not now enter an order herein, but will hold the case open for the entry of such order as may hereafter be found to be necessary.

No. 4313.

BLODGETT MILLING COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.

Submitted March 14, 1912. Decided May 6, 1912.

The complainant alleges that defendants' tariffs which provide that rough grains may be milled or otherwise treated in transit at Minneapolis, St. Paul, and Minnesota Transfer give undue preference and advantage to those points, and subject Janesville, Wis., to undue prejudice and disadvantage, *Held:*

1. That, as the Chicago, Milwaukee & St. Paul Railway Company is the only defendant serving all the points involved, the other defendants can not be guilty of violating the act as alleged. *Johnson & Co.* v. *A., T. & S. F. Ry. Co.*, 21 I. C. C., 637.
2. That the action of the St. Paul road in granting the transit privileges at the twin cities was clearly forced by competition between the carriers and the circumstances and conditions surrounding the transportation of grain products from the twin cities to Pacific coast points and from Janesville to the same destinations are not so nearly alike as to constrain the Commission to order this carrier either to cease and desist from according the present privileges at the twin cities or to establish similar privileges at Janesville. Complaint dismissed.

William D. Kerr for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

Alfred H. Bright for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

James J. B. Orth for Electric Malting Company and Minneapolis M[illegible] Grain Company, interveners.

[illegible] *Trickett, T. A. McGrath*, and *Francis B. James* for Minneapo-[illegible] ciation, intervener.

REPORT OF THE COMMISSION.

MEYER, *Commissioner:*

The complainant is a milling company located at Janesville, Wis., and mills rye and buckwheat into flour. Some of its rye flour is sold in what are called Pacific coast markets, in the states of Montana, Washington, Oregon, and California. In a petition, filed August 12, 1911, it complains that certain tariffs of the defendants, the Chicago, Milwaukee & St. Paul Railway Company, the Great Northern Railway Company, the Northern Pacific Railway Company, and the Minneapolis, St. Paul & Sault Ste. Marie Railway Company, grant undue preference and advantage to Minneapolis, St. Paul, and Minnesota Transfer, hereinafter referred to as the twin cities, and subject complainant and the city of Janesville to undue prejudice and disadvantage. Petitions of intervention were filed by the Electric Malting Company of Minneapolis and the Minneapolis Malt and Grain Company, and at the hearing the Minneapolis Traffic Association also intervened. These interveners unite in asking that the complaint be dismissed. The tariffs attacked are separately published by the roads named and provide that certain grains originating at local points may be milled or otherwise treated in transit at the twin cities and the product forwarded to destinations on the Pacific coast upon basis of the through rates applying from points of origin to such destinations as published in the transcontinental tariffs concurred in by all the carriers. Janesville is served by two carriers, the Chicago & North Western Railway Company and the Chicago, Milwaukee & St. Paul Railway Company; of which only one, the St. Paul road, is here named as defendant. The other roads named as defendants serve the twin cities but do not reach Janesville; and, therefore, under the holdings of this Commission they can not, in law, be guilty of subjecting the complainant or the city of Janesville to undue prejudice or disadvantage. *Johnson & Co.* v. *A., T. & S. F. Ry. Co.*, 21 I. C. C., 637.

Janesville is about 99 miles northwest of Chicago and 274 miles southeast of the twin cities by way of the lines of the defendant the St. Paul road; and while the complainant does not claim that it is entitled to equality in rates to the Pacific coast with the twin cities. it insists in the petition that (a) the principle involved in these transit tariffs is unjust, unreasonable, discriminatory, and in these and other respects objectionable and in violation of those provisions of the act which require the rates, regulations, and practices of the carriers to be just, reasonable, and not unjustly discriminatory; or, as claimed at the hearing, that (b) similar transit privileges be allowed at Janesville. The complainant is actually interested only in the provisions in the tariffs which permit the milling of rye into flour at

the twin cities; nevertheless it attacks these tariffs as a whole as unlawful, alleging that but for the transit privileges allowed on corn, oats, and barley such concessions would not be extended to rye.

Minneapolis is one of the world markets for grain. The tariffs under attack provide in substance for the treatment, or milling, in transit at the twin cities of certain rough grains "from points on connecting lines," or "from points beyond," consigned originally to the twin cities and for the forwarding of the product to the Pacific coast within a given time at the balance of the through carload rate on the product from point of origin. In some cases a charge of 2 cents per 100 pounds is imposed for this privilege. This practice of allowing transit privileges on rough grains at the twin cities arose about June 1, 1909, upon the request of dealers in these cities. It appears that corn originating in the corn district in southwestern Minnesota, South Dakota, Nebraska, and Iowa, and shipped by way of the Union Pacific and Burlington roads to Pacific coast destinations under the rates provided in the transcontinental tariffs could be treated in transit at Grand Island and Holdredge, Nebr., and other points. Those tariffs also permitted routing via the Great Northern, the Northern Pacific, and the Soo lines, but dealers wishing so to route were embarrassed by lack of facilities for treating corn at points strictly intermediate the points of origin and destination. Thereupon the three northern transcontinental lines, in order to assist the dealers in the twin cities and to get the long haul for themselves, established transit privileges at the twin cities, facilities for the proper treatment of grain already existing there. When the Puget Sound extension of the St. Paul system was completed that carrier also established transit privileges under somewhat broader rules in order to secure some of this traffic.

The price of grain at the points of production is generally the price at central markets, such as Chicago, Kansas City, and the twin cities. less the freight rate to the dominant market. The carriers have grouped with the twin cities a large section of the country adjacent thereto in publishing grain rates to the destinations here involved. But for the transit tariffs under consideration, shipments of grain from any point in this group would move to destination at the given rate without treatment at the twin cities. Under these tariffs the grain moves to the twin cities on the local rate, and after being milled or otherwise treated the product is forwarded to ultimate destination upon payment of the difference between the local rate and the through rate from point of origin. This, the complaint alleges. defeats the published rate, involves a back haul in some cases, and gives the dealers at the twin cities a double advantage, first, in the price of the grain, and, second, in the rate.

The record does not sustain these allegations. The rate paid is the through rate from origin to destination, and the transit privileges are of benefit to the carriers, the dealers, and the public. This is true particularly of corn, which must be put in proper condition for long hauls or it will heat or freeze in transit, according to the weather, and be subject to rejection at destination. Whatever advantage dealers in grain may have by reason of their location, either at the twin cities or west thereof, it is not the province of this Commission to take away. The only questions before us are the propriety of these transit tariffs in their general application and whether the action of the St. Paul road in granting such privileges at the twin cities and withholding them at Janesville results in unjust or undue prejudice or disadvantage to the latter place and to the complainant.

In the case of *Johnson* v. *A., T. & S. F. Ry. Co., supra,* a tariff similar to those now under investigation was not condemned, and the provisions of the present tariffs, read in connection with the transcontinental tariffs, are convincing that the complaint was brought under a misconception of the application of the joint rates and transit privileges. The complaint was founded, in part, upon the assumption that the transcontinental tariffs, taken in conjunction with the transit privileges given at the twin cities, permitted uncompensated back hauls over the lines of the delivering carriers. This misconception was corrected at the hearing when counsel for complainant stated in the record:

My understanding is that under these tariffs, and we will consider them all together, that no one of the transcontinental lines—and by transcontinental lines I mean now the Great Northern, the Northern Pacific, and the Soo line—will accept business which comes into Minneapolis over another transcontinental line for the reason that the transcontinental tariffs, either by express limitation or by interpretation placed upon the tariffs by the railroads and by the trade, do not provide for through shipments participated in by two or more of the transcontinental carriers. * * *

That explanation disposes of the question I asked with reference to Minot, N. Dak. Minot, N. Dak., being on the lines of two of the transcontinental carriers, if a shipment comes from Minot to Minneapolis, it will not be handled out of Minneapolis by the other transcontinental carrier because there is no through routing arrangement under the transcontinental tariff which provides for participation in the through haul by the two carriers. * * *

I understand, further, that by the interpretation of the roads and by the understanding of the trade, the Chicago, Milwaukee & St. Paul Railroad is not dealt with nor considered as a transcontinental carrier. That the St. Paul road, and business originating on the line of the St. Paul road, is considered as the Rock Island, Great Western, Minneapolis and St. Louis, the North Western; and as to business originating from such roads with respect to the operation of the transit tariffs and the business to the north Pacific coast, each of the transcontinental roads considers that it is an active competitor for business to north Pacific coast points, for business originating on the lines of the nontranscontinental roads. These tariffs are compiled and applied for the purpose of enabling transcontinental roads to share in the business. * * *

I understand there is no back haul from a transportation standpoint with the exception, perhaps, of the back haul from Minneapolis to Wilmar on the Great Northern road; that may be a back haul, and I believe one witness has testified that it is a back haul from the transportation standpoint, but aside from that I do not think there is any back haul from a transportation standpoint.

Careful examination of the transcontinental tariffs referred to and of the transit tariffs of these defendants, confirms this statement, and on the record before us we see no reason to condemn these transit privileges as applied at the twin cities.

Clearly, on shipments to the Pacific coast and related points, there are privileges accorded by the defendants at the twin cities which the St. Paul road has not extended to the complainant at Janesville, and the question remains whether Janesville or the complainant is thereby unduly prejudiced. There is evidence to the effect that since these privileges were granted at the twin cities trade in rye flour from Janesville to the destinations named has fallen off; the record further shows an expansion in the milling of rye at the twin cities, but it fails to disclose any direct connection between these two facts. Perhaps the fact that the Minneapolis mills ship mixed carloads of rye and wheat flours, whereas the complainant ships only rye, may explain the commercial disadvantage the complainant has to overcome.

The complainant urges that as a competitor of the Minneapolis miller it is entitled to know the exact extent to which the freight rate enters into the price of rye flour milled at Minneapolis and offered for sale on the Pacific coast, and that these transit tariffs make such knowledge impossible. The record makes it fairly appear that some of the rye milled at Minneapolis comes from points of origin not entitled to these transit privileges, and that whenever milling in transit does apply the rate is the joint rate from point of origin to destination upon the flour, not the grain, plus 2 cents per 100 pounds for the privilege. The complainant, however, insists that inasmuch as the price of the grain at the point of origin is substantially the price at the dominant market, less the freight rate to the market, that the application of the transit privilege gives the Minneapolis mills an advantage to the full extent of the local rate in to the mills and that the mills will apply on the balance of the movement the inbound expense bills from the more distant points of origin and carrying the higher local rates. Such facts as the record discloses appear to negative the more serious fears of the complainant. Minneapolis millers generally buy grain in districts dominated by its market, because geographically tributary thereto; the complainant ordinarily buys grain in districts controlled by the Chicago market, which normally is higher than the Minneapolis market by the eastbound freight rate between these places, the controlling current

of grain movement being eastward to the Atlantic coast; and while it is possible for the Minneapolis miller to buy rye or other grains in districts tributary to the Chicago market and, under these transit tariffs, to forward the product to the Pacific coast, there is no evidence here of such movement. Indeed, so far as rye is concerned, the evidence is to the effect that Minneapolis and Janesville buy in different districts.

Nothing said in this report is to be construed as commending these transit tariffs; if substitution of tonnage in transit, or other defeasance of the rate, is practiced under them that may be dealt with in the appropriate manner; our conclusions are drawn upon the record before us.

The rate on rye flour from the twin cities to Pacific coast points is 70 cents per 100 pounds; from Janesville it is 75 cents; and this adjustment, the complainant admits, is reasonable; but it says that as long as the twin cities have the transit privilege, virtually absorbing the local rate into the mill, less 2 cents per 100 pounds, and Janesville has no such privilege, that Janesville will be prejudiced thereby. This is true. The record shows, however, that these transit privileges at the twin cities were established by carriers not serving Janesville and that the St. Paul road attempted, in granting similar privileges at the twin cities, to conserve its interests at that market. This action of the St. Paul road was clearly forced upon it by competition between carriers, and the circumstances and conditions surrounding the transportation of grain products from the twin cities to Pacific coast points and from Janesville to the same destinations are not so nearly alike as to constrain us to order the St. Paul road either to cease and desist from according the present transit privileges at the twin cities or to establish similar privileges at Janesville, which would most probably involve actual back hauls.

The complaint will be dismissed.

No. 879.

CITY OF SPOKANE ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted May 8, 1912. Decided May 14, 1912.

Commission declines to accept changes proposed in rates involved herein and will take no further action until decision of the Supreme Court in the original case.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, *Chairman:*

June 7, 1910, the Commission promulgated a report in this case by which it held that the class and commodity rates then in effect from eastern defined territories to Spokane and Spokane territory were unreasonable, and named certain rates which in its opinion would be reasonable. 19 I. C. C., 162. The class rates named were established and are now in force, but the establishment of the commodity rates was postponed pending an investigation into the effect of their establishment upon the revenues of the carriers.

Before the result of this investigation was fully known the fourth section was amended and the city of Spokane contended that under a proper application of that section, as amended, rates more favorable than those found reasonable by the Commission would result. Thereupon the Commission heard all parties in evidence and in argument, touching the interpretation and application of the fourth section to these transcontinental rates, and as a result issued on June 22, 1911, a fourth section order in this case. 21 I. C. C., 400. It did not establish the rates previously found reasonable by its report of June 7, 1910, for the reasons stated in the following paragraph, found on page 427 of the opinion:

> We do not think that any further order should be made for the present in this case. It may be asked why the schedule of rates suggested by the Commission as reasonable should not be ordered in. The answer is that carriers should be permitted in so far as possible to adjust their own tariffs and that it seems probable that in compliance with this order carriers must establish rates in substantial accord with those suggested by us. It should be ever borne in mind that the acute complaint in this case is the discrimination and not the unreasonable rate. Obedience to this order will doubtless result in some rates from the east which are higher and in others which are lower than those suggested by the Commission since we did not then feel at liberty, as the complainants requested, to make the Spokane rate depend upon the coast rate. But it is likely that the resulting schedule will be more satisfactory to the complainants and

no more burdensome upon the defendants. If the carriers establish under this disposition of the case rates to Spokane which are excessive, a further order can be made in this proceeding reducing them to a proper basis.

Proceedings were begun in the Commerce Court to restrain the operation of our fourth section order of June 22, 1911, which resulted in an injunction from that court against the enforcement of the order. From this decree an appeal was at once taken to the Supreme Court of the United States, and in that court the case was advanced and was finally argued and submitted on February 27, 1912.

On April 8, 1912, the Supreme Court reassigned this case for argument in October. When it became evident from the action of the court that a considerable time must still elapse before a decision could be had, protests began to be received from the city of Spokane and other interested communities, urging that immediate steps be taken by the Commission to secure some relief from the present rates which had been condemned as unreasonable by us, and the Commission, feeling that some measure of relief should be granted, set the case down for further consideration on May 8, 1912, having under advisement the propriety of establishing forthwith the rates found reasonable by its opinion of June 7, 1910.

At this hearing the defendant carriers presented a schedule of carload commodity rates, from eastern defined territories to Spokane and Spokane territory. The rates named by this schedule were on the average some 4 per cent higher than those found reasonable by the Commission from the Missouri River, 7 per cent from Chicago, 10 per cent from Detroit and Pittsburgh, while from the Atlantic seaboard they were practically the same.

The schedule of the Commission had named both carload and less-than-carload commodity rates, but the schedule of the carriers embraced no less-than-carload rates.

It was stated by representatives of the defendant carriers and by the attorney of the city of Spokane that an agreement had been reached whereby this schedule was to be forthwith established by the carriers and this proceeding discontinued by the complainant. The approval of the Commission to this agreement was requested.

Upon this proposition the Commission remarks:

First. The *Spokane case* can not be discontinued. Other parties, involving other communities, have intervened and are parties to that proceeding. After the time and effort expended in perfecting that record the Commission would not feel warranted in allowing the proceeding to be discontinued until the matters in issue had been finally disposed of.

Second. The reasonableness of the proposed schedule has not been considered by the Commission and no opinion whatever is expressed thereon.

Third. No opinion is expressed whether less-than-carload commodity rates should be finally prescribed.

Fourth. The Commission adheres to the position which it has taken under the fourth section and will feel entirely free to dispose of this whole question as may seem just, when it is determined by the Supreme Court what action can be taken under that section.

If the carriers, understanding the position of the Commission to be as above stated, see fit to make the proposed rates effective by June 1 next, the Commission will take no further action until the final decision of the court upon the fourth section proceeding.

If the carriers do not, on or before May 25, 1912, notify the Commission of their intention to establish this schedule, the matter will be at once otherwise proceeded with as may seem just and proper in the premises.

APPLICATIONS FOR RELIEF UNDER THE FOURTH SECTION: Nos. 205, 342, 343, 344, 349, 350, AND 352.

No. 1665.

RAILROAD COMMISSION OF NEVADA
v.
SOUTHERN PACIFIC COMPANY ET AL.

No. 1796.

MARICOPA COUNTY COMMERCIAL CLUB
v.
SANTE FE, PRESCOTT & PHOENIX RAILWAY COMPANY ET AL.

Submitted May 8, 1912. Decided May 15, 1912.

Carriers permitted to institute proposed commodity rates, but their reasonableness not passed upon.

SUPPLEMENTAL REPORT OF THE COMMISSION.

ssioner:

ultimate decision of the questions involved in the so- ort-haul cases (See *Railroad Commission of Nevada*

v. *So. Pac. Co.* and *Maricopa County Commercial Club* v. *S. F., P. & P. Ry. Co.*, 21 I. C. C., 329) led the complainants to make request upon the Commission for the establishment of commodity rates complementing the class rates previously instituted. The Commission thereupon entered an order upon the carriers to show cause why such commodity rates should not be instituted. The matter coming on for hearing, the carriers defendant presented a proposed schedule of commodity rates which they volunteered to put into effect pending the determination of the questions involved in the long-and-short-haul cases, and covering the great volume of the traffic moving now in carload lots into Nevada and Arizona. The carriers stated at the time that in presenting these rates they were not presented as reasonable, but were regarded by them as established to meet a situation of embarrassment. The complainants would not agree that such commodity rates as were offered met their full demand, but they submitted the question as to the advisability of such rates going into effect to the Commission.

Upon full consideration of the matter we see no reason why this Commission should object to the course of procedure suggested by the carriers, and will permit upon short notice the carriers to institute the proposed commodity rates, it being expressly understood that the Commission in no wise passes upon the reasonableness of these rates or upon any question of discrimination arising from their institution. Our sole purpose is to give as great a degree of relief as is possible immediately to these communities which have been contending before the Commission for years against rates which were contrary to the principles of the act.

No. 4052.

COLORADO COAL TRAFFIC ASSOCIATION
v.
DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Submitted March 6, 1912. Decided May 6, 1912.

1. Complainant assails defendants' method of distributing cars for the transportation of coal from mines in Huerfano and Las Animas counties, Colo., to interstate points. The testimony shows that no definite plan which might have served as a guide and authority alike for shippers and operators has been in existence in this coal district. The absence of such a plan is probably responsible for much, if not all, of the suspicion with which the distribution of cars has been regarded in the past. The record fairly establishes that some unjust discrimination has been practiced in the distribution to the various mines in question.
2. The Commission believes it to be imperative that rules and regulations should be formulated and published by the carriers at the earliest practicable date after proper conference with the operators. If, after such rules and regulations have been given a fair trial, some or all of the operators feel that they do not meet the situation, and the carriers are unwilling to accede to their wishes, the reasonableness and justice of such rules and regulations may be brought to the attention of the Commission. The carriers defendant herein will be required to publish rules and regulations governing the rating of mines and the distribution of cars and to maintain records with reference thereto in such a manner that a representative of the Commission, or anyone else entitled to have access to information of this kind, may ascertain readily such ratings and distribution. Sixty days is deemed a reasonable time within which to comply with these requirements.

C. W. Durbin and *A. L. Vogl* for complainant.

E. Whitted and *J. M. Cates* for Colorado & Southern Railway Company.

E. N. Clark and *J. G. McMurry* for Denver & Rio Grande Railroad Company.

Caldwell Yeaman for Victor-American Fuel Company, intervener.

Charles E. Herrington for Colorado Fuel & Iron Company, intervener.

Report of the Commission.

Meyer, *Commissioner:*

The petition in this case, filed April 28, 1911, states that the complainant is a voluntary association, with offices at Denver, Colo., of corporations and individuals engaged in the business of mining and shipping coal in carloads from mines in the southern part of Colorado

to interstate points. It alleges, in substance, that the defendants have violated the act to regulate commerce by its method of distributing cars for the transportation of coal and seeks the establishment of a "just and equitable" system of distribution. The mines involved are situated in Huerfano and Las Animas counties, Colo., chiefly on the so-called Loma branch, and are served by the two defendants, the Denver & Rio Grande Railroad Company and the Colorado & Southern Railway Company. It is asserted by complainant that by agreement between the defendants the rate for the transportation of coal in carloads is the same via either line from any mine in Huerfano or Las Animas county except Grey Creek in Las Animas county on the Colorado & Southern and Cokedale in Las Animas county and Oakdale in Huerfano county on the Denver & Rio Grande. With these exceptions all mines in these two counties on the line of either of the defendants are on joint tracks. The switching at the respective mines, regardless of the routing of the coal, is performed by the road on whose tracks the mine is located; that is to say, coal loaded at any mine on the joint tracks may be billed out over either line, but the switching service is performed by the railroad owning the tracks into the shipping mine, thus making all mines dependent upon one or the other defendant for switching service. The mines in these two counties are divided into two districts, viz, the Walsenburg district and the Trinidad district. There are 35 mines in the former and 14 mines in the latter district.

The specific allegations of the complaint are that during the last half of 1910, and for several winters previous thereto, the defendants failed to furnish complainant's members, or any one of them, with a sufficient number of cars in which to transport coal to interstate points, but during the same time they furnished cars in ample numbers to coal mines and coke ovens located in Colorado on the lines of the Colorado & Southeastern Railroad, Colorado & Wyoming Railway, and the Atchison, Topeka & Santa Fe Railway; that the mines and coke ovens on the lines of the two first-named railroads are owned by corporations controlling such roads, namely, the Victor-Colorado Fuel Company and the Colorado Fuel & Iron Company, and that such corporations have been given an undue preference or advantage in the distribution of cars, while complainant's members have been subjected to undue prejudice or disadvantage. It is contended that as a result of this situation complainant's members have been unable to keep their mines in continuous daily operation, thereby causing financial loss as well as creating dissatisfaction among their miners, which culminated in their seeking employment in other districts.

The complaint further alleges that the defendants have a most unjust and inequitable system for the distribution of empty cars; that

no person is in charge of such work, but it is left to agents, yardmen, and conductors; that for years complainant has been trying to have a reasonable system adopted by the defendants, and on February 16, 1911, it presented to them a set of rules designed to meet the matter of car shortage, but such rules were not adopted.

The prayers of the complaint are (1) that the defendants be ordered to cease and desist from billing or delivering any empty cars to foreign railways until after each and every coal mine on the line of either defendant, or their joint tracks, has been given a sufficient number; (2) to cease from discriminating against complainant; and (3) to put in an equitable system or method of distribution of empty cars.

The Victor-American Fuel Company filed a petition of intervention, setting up the fact that it owns mines at three points in the Trinidad district, viz, Delaqua, Cass, and Hastings. The nearest stations to these mines are Ludlow, Colo., on the Colorado & Southern Railway, and Barnes, Colo., on the Denver & Rio Grande Railroad. From Ludlow the three points named are 5½, 4¾, and 2¼ miles distant, respectively, while from Barnes they are distant 6¾, 6, and 3½ miles, respectively. This intervener contends that it owned and operated these mines before complainant's members were in possession of any of their mines; that the Colorado & Southeastern Railway is a lateral line of railroad connecting the mines with Barnes, on the Denver & Rio Grande Railroad, and Ludlow, on the Colorado & Southern Railway; that the Colorado & Southeastern Railway Company owns no coal cars, or other freight cars, but since its organization has been supplied by defendants with car equipment. It denies that any discrimination has been practiced against the complainant in its favor and avers that to grant the prayer of the complaint, requiring said defendants to cease and desist from delivering empty cars to the Colorado & Southeastern Railroad Company for the use of its mines, until after each and every other coal mine on the lines of defendants, or either of them, or on their joint tracks, have been given a sufficient number of empty cars to keep said mines in continuous operation, would be the grossest discrimination against the intervener. It prays that defendants be required to furnish the Colorado & Southeastern Railroad Company for their use a fair proportion of cars according to any just rule the Commission may promulgate and enforce.

The Colorado Fuel & Iron Company also filed a petition of intervention of similar purport to that of the Victor-American Fuel Company with the exception that the Colorado & Wyoming Railway Company is referred to instead of the Colorado & Southeastern. The answers of the two defendants deny the essential allegations of complaint.

The whole of this somewhat voluminous record resolves itself into two parts, one dealing with the manner of car distribution during the past and the other with a basis for car distribution in the future.

Upon the argument petitioners laid emphasis upon the proposition that defendants have no right to send empty cars off their lines until they have furnished sufficient cars to the mines on their lines, making reference to the cases of *Memphis Freight Bureau* v. *F. S. & W. R. R. Co.*, 13 I. C. C., 1, 8, and *Traer* v. *C. & A. R. R. Co.*, 13 I. C. C., 451, 456. Of the correctness of this general proposition there can be no doubt. In the instant case the foreign roads referred to, if we understand petitioner's contention, are primarily the Colorado & Southeastern and the Colorado & Wyoming.

The Colorado & Southeastern has 6.27 miles of main line and, apparently under trackage rights, operates over the Colorado & Southern tracks from Ludlow to Trinidad, Colo., a distance of 14.51 miles. As stated above, it has no coal cars.

The Colorado & Wyoming is controlled by the Colorado Industrial Company, which appears to be affiliated with the Colorado Fuel & Iron Company, having several officers in common with the latter. It has 14.52 miles of main line in Wyoming and 31.10 miles in Colorado, these two stretches of main line having no physical connection with each other, except through many miles of line of other carriers. It has 0.14 mile of spur track connecting with the Chicago, Burlington & Quincy in Wyoming, and 6.86 miles of spur track in Colorado; also trackage rights of 2.12 miles of the lines of the Atchison, Topeka & Santa Fe between Trinidad and Jansen, Colo. As of June 30, 1911, it reported to this Commission that it had 25 locomotives of average weight of 61 tons on drivers, 111 freight cars, 372 coal cars, 5 tank cars, 2 refrigerator cars, and 2 other freight cars.

It will be observed that the report to the Commission which ascribes to the Colorado & Wyoming 372 coal cars is at variance with the testimony to the effect that this road had no coal cars.

There is nothing in this record tending to show the adequacy or inadequacy of the car supply of the Colorado & Wyoming. As a matter of practical operation the entire coal car supply of all the carriers serving these mines should be considered in connection with this proceeding. The great underlying practical question is whether the equipment of these carriers is reasonably adequate to meet the reasonable requirements of the traffic which they are bound to serve. To this question no testimony was directed.

While the many exhibits and testimony relating thereto bearing upon the question of car distribution in the past do not point with entire clearness to well-defined conclusions, we think it has been fairly established that some unjust discrimination has been practiced

in the distribution of cars to the various coal mines in the past. The existence of discrimination for a very brief period of time was admitted by the carriers, while the petitioners apparently intended to support the allegation that unjust discrimination had been the general practice during periods of car shortage. No complaint is made with reference to car distribution during ordinary times.

Witnesses for petitioners insisted that no definite plan for the distribution of cars was now or ever had been in existence in the Walsenburg district. The defendants introduced an exhibit which was intended to establish the fact that some system had actually been in existence and adhered to. This exhibit is apparently no more than a record of the actual distribution of cars for a period of time covered therein, rather than a system of rules and regulations in accordance with which cars can be distributed. In the light of the testimony as a whole it must be said that no definite plan which might have served as a guide and authority alike for carriers and operators has been in existence in the coal district here in question. The absence of such a plan is probably responsible for much, if not all, of the suspicion with which the distribution of cars has been regarded in the past.

Numerous references were made in the testimony to so-called "car rustlers." It appears that the word "rustler" has an established place in the vocabulary of the western population. The phrase "car rustler" is said to have been derived from the phrase "cattle rustler" which latter was construed to mean the equivalent of cattle thief. As is frequently the case, the derivative does not bear all of the significance of the original; and so far as the testimony shows no one seriously contends that the term car rustler was used as the equivalent of car thief. One witness explained the term thus: "Suppose there is an engine there with a crew that is able to take one of those bunches of cars and it is a matter of indifference which bunch they take. If a rustler is on the spot and has gotten his cars, and he is a good fellow, he may get that crew to move his bunch of cars and leave the other fellow's bunch standing there until he gets back." Another witness stated that car rustling "signifies activity." Another explained that if there were from 50 to 100 cars in a yard car rustlers would come in to assist the train crews in the distribution of such cars. Elsewhere in the testimony rustling was described as "promptness," distributing cigars, joining men in lunches through the coincidence of being hungry at the same time, and spending pocket money for "easily digestible" things which the men like. It was admitted that the car rustler was employed "to do a highly important piece of work," but denied "that he was doing anything that was not legitimate."

Whatever car rustlers may have done, or may not have done, it is undisputed that such a class of men exists. The mere existence of

the term is sufficient to suggest improper practices. It is the plain duty of the carriers to distribute cars equitably. If they do not have a sufficient number of employees to do this in a manner lawfully required of them, they, and not the mine operators or other shippers, should hire men to facilitate the distribution. It is impossible to read the testimony with respect to this system of car rustling without feeling that everything is not as it should be. Every operator should be able to rely upon published rules and regulations governing car distribution rather than upon men privately hired by him who may haunt the yards between the hours of 4 and 5 in the morning.

Allusion has already been made to an exhibit of the carriers purporting to show the "plan" in accordance with which they have distributed cars. An examination of that exhibit, as previously suggested, does not reveal any plan as such, but it is rather a record of what was actually done within a certain period of time. Witnesses for the carriers stated that the chief dispatcher of the division has directly to do with the ascertaining of the empties available for distribution and the number of cars needed by the various mines. He is expected to keep himself informed both in regard to cars needed and cars available. It was stated that he gets his information from various sources—from reports of empties at the different terminals, reports of empties in trains that are moving, reports of empties assigned to different places, the requirements of the different mines as reported by local agents at the mines and from his own knowledge of what the different mines are doing. It was stated that the dispatcher knows the capacity of each mine by its performance and that he uses as the basis for the distribution of cars during times of car shortage, not only contemporary information, but also information previously acquired by him in various ways. "Nobody knows what the general plan is but the chief dispatcher and the conductor of each particular train?" To this question a witness for the carriers answered in the affirmative. He also answered in the affirmative the supplementary question that "their combined action represents the general plan that is in the mind of the dispatcher?"

This is sufficient as a description of the "plan" which is said to be in effect. It must be obvious that a plan which rests in the minds of two men, dispatcher and conductor, can not be a plan which can possibly satisfy many operators in rivalry with one another, no matter how conscientious or faithful those two men may be.

Several somewhat extraordinary features connected with the coal business in the Colorado fields were brought out in the testimony. One of these is the custom of double ordering of cars from the railway company. It is stated in the testimony that if an operator wants, for instance, 10 cars, he will not order 10 cars from one of the two

companies, but 10 cars from each—the Colorado & Southern and the Denver & Rio Grande. Furthermore, if he needed 3 cars he would probably order 10. Witnesses for the carriers testified that this custom of double ordering did not usually mislead them. Even though they were not misled by it, the practice must be condemned. Another, and possibly even more extraordinary feature, is the system of what may be termed multiple ordering of coal. It appears that when a coal dealer at some station in Kansas or Nebraska desires one carload of coal he sends an order for this carload to perhaps 10 different operators at the same time, and whichever operator actually delivers a car first at the station from which the order was sent gets the sale. It is a natural inquiry to make in this regard whether car rustling may not have much to do with this system. Still a third feature, which, however, has been brought to the attention of the Commission with respect to the coal business in various other parts of the country is the practice of starting loaded cars of coal for points like Pueblo and Denver in the hope that a sale may be effected before the cars reach those points. It appears to us that double ordering of cars and multiple ordering of coal militate against the most equitable distribution and use of available coal cars in these coal districts.

In the light of the entire situation, as described above, and other matters brought out in the testimony, there can be little surprise that uneasiness and suspicion should have arisen among some of the operators during periods of car shortage. It appears that a conference between operators and carriers was held, at which the so-called Hillsdale plan, 19 I. C. C., 356, was discussed. Those of the operators who expressed themselves with respect to the matter at this meeting spoke in opposition. Petitioners are obviously opposed to any system of physical and commercial rating of their respective mines identical with or analagous to that adopted by this Commission in the *Hillsdale case, supra.* Instead of using the number of calendar days in estimating the commercial capacity of a mine, petitioners desire to use the number of days and hours a mine has been in actual operation. This results in what they term the idle-hour system of rating which they advocate. A complete set of rules and regulations based upon this principle is submitted in the briefs.

Even if the Commission had full and complete information with respect to matters entering into the formulation of rules and regulations for car distribution in these coal districts, it is doubtful whether it should, in the first instance, prescribe such rules. However, we are not in possession of the requisite information. This is peculiarly a matter for action on the part of the interested carriers and operators. We believe it to be imperative that rules and regulations should be formulated and published by the carriers at the earliest practicable

date after proper conference with the operators. If, after such rules and regulations have been given a fair trial, some or all of the operators feel that they do not meet the situation, and the carriers are unwilling to accede to their wishes, the reasonableness and justice of such rules and regulations may be brought to the attention of the Commission. We shall therefore require the carriers defendant herein to publish rules and regulations governing the rating of mines and the distribution of cars and to maintain records with reference thereto in such a manner that a representative of the Commission or anyone else entitled to have access to information of this kind may ascertain readily such ratings and distribution. Sixty days is deemed a reasonable time within which to comply with these requirements. An order will be issued in accordance with the conclusions expressed herein.

No. 4330.

NEW ORLEANS BOARD OF TRADE, LIMITED,
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted February 27, 1912. Decided May 13, 1912.

Defendants' export rates from Henderson and Owensboro, Ky., to New Orleans, La., on tobacco are less per 100 pounds when the traffic is destined to Liverpool and Bristol, England, than when destined to other European ports; *Held,* That the different export rates are not justified by any substantial dissimilarity of circumstances and conditions.

John A. Smith for complainant.

D. B. H. Chaffe for interveners.

Chas. J. Rixey, jr., and *R. Walton Moore* for Illinois Central Railroad Company.

Nelson W. Proctor, *William A. Northcutt*, and *Albert S. Brandeis* for Louisville & Nashville Railroad Company.

Report of the Commission.

McChord, *Commissioner:*

The petition in this case is filed by the New Orleans Board of Trade on behalf of certain steamship companies which operate vessels from

New Orleans, La., to various European ports. Gallaher, Limited, a Kentucky corporation; Nosworthy & Argue, a partnership; and R. E. O'Flynn, a merchant, all engaged in the tobacco business at Henderson Ky., intervened in behalf of complainant and took part in the hearing and argument.

The gravamen of the complaint is that, for the transportation of unmanufactured tobacco from Henderson and Owensboro, Ky., to the port of New Orleans, La., for export, the defendants charge 21.5 cents per 100 pounds when the traffic is destined to Liverpool, 22 cents per 100 pounds when destined to Bristol, and 25 cents per 100 pounds when destined to other European ports. The petition alleges that this discrimination between the export rates to New Orleans is unreasonable and unjust; that it creates a preference and advantage in favor of American dealers in tobacco who ship to Liverpool and Bristol through the port of New Orleans; and that it subjects to undue prejudice and disadvantage the port of New Orleans as well as dealers who ship tobacco through said port to European ports other than Liverpool and Bristol. The intervening petitions are filed by shippers who have exported tobacco to destinations other than Liverpool and Bristol, and consequently have paid the higher export rate. The defendants admit that their rates are as alleged in the petition, but deny that the maintenance of said rates is unreasonable, unjust, or otherwise in violation of law. The defendants assert that this adjustment of rates from Owensboro and Henderson is made to meet competition for the carriage of this traffic through the Atlantic seaboard ports, and that the circumstances and conditions surrounding the transportation of tobacco to European ports other than Liverpool and Bristol are so dissimilar as to warrant the existing difference in the export rates.

Briefly stated, the question to be decided is whether a carrier lawfully may make different export rates on the same traffic from the same point in the United States to the same port of transshipment by reason of the fact that beyond the port of transshipment the traffic is to be carried to different destinations. This question appears to be novel and but little assistance is to be gathered from previous cases.

Defendants' testimony is to the effect that the rates to European ports via New Orleans are made in competition with through rates via the eastern ports; that in deciding upon the rates necessary to meet the competition through the Atlantic seaboard the lowest combination through Boston, New York, and Baltimore is ascertained, and from such lowest combination through rate to the European ports 2 cents per 100 pounds is deducted to cover the difference in mileage and marine insurance, when the export rates are published

from Henderson and Owensboro to New Orleans, which, added to the ocean rates to Liverpool and Bristol, will make the through rates 2 cents per 100 pounds less than the through rates made on combination through the Atlantic seaboard ports. Defendants state that in the case of shipments destined to Liverpool and Bristol the competition through the north Atlantic and Virginia ports is of compelling and controlling force, while in the case of shipments to other European ports competition through the north Atlantic ports is not so strong.

It is said that the fast passenger steamers plying to Liverpool, principally from New York, transport freight at considerably less than the normal ocean rates; that the steamers plying from New Orleans to Liverpool will make no reduction in their charges, and that defendants, in order to participate in the Liverpool traffic, must shrink their own revenue. Without commenting upon the manner in which the alleged competition is sought to be met, we are not prepared, on the facts before us, to concede the depression of ocean rates from New York to Liverpool. From the best obtainable information, it appears that during the past two years the ocean rates, in cents per 100 pounds, have been as follows:

From—	To Liverpool.	To London.	To Glasgow.
New York	18	22	25
Boston	11-25	22	25
Baltimore	20.5	25	....
New Orleans	28-43	30-45	35-47

The deduction from the foregoing is twofold: First, the relationship of the rates from New York and from New Orleans is approximately the same to Liverpool, London, and Glasgow, and does not bear out defendants' assertion that the New York-Liverpool rates are abnormally low; and, second, the ocean rates from the north Atlantic ports have been practically stationary for the past two years, while from New Orleans there has been a spread of about 50 per cent between the minimum and maximum, and the fluctuations have been frequent and violent. With such a condition it is impossible to draw a definite comparison between the rates out of New Orleans and those out of other ports. Nor can we appreciate defendants' theory of equalization, when one of the factors to be equalized is an ocean rate that may, and often does, vary from day to day, and sometimes from hour to hour. If even a substantial equalization is to be accomplished, the inland rail rates must fluctuate with as much frequency and approximately to the same degree as the water rates, a thing impossible under the provisions of the law, which require that the export rate shall be published and filed and may be changed only upon 30 days' notice.

Several other significant facts are at least entitled to mention. New Orleans is the only port to which different export rates from the same point of origin when for the same European destination are published; Owensboro and Henderson are the only places from which such varying export rates are in effect; and tobacco is the only commodity so treated. As we have seen, competition through the north Atlantic ports is the reason assigned for the existence of these different rates only to New Orleans. Owensboro and Henderson are also located on the Louisville, Henderson & St. Louis Railroad, which, with its eastern connections, affords a through route to the Atlantic seaboard, and the defense is that this competition forces the lower export rates to New Orleans for Liverpool. Why tobacco is alone in this novel rate adjustment probably is best explained by the following excerpt from the testimony of a witness for the defense:

The Imperial Tobacco Company ships to Liverpool, London, Glasgow, and Bristol, and they won't take their Liverpool business by one port and their London business by another. All of their tobacco they ship away in one season must go via one port. They ship by the Gulf ports, Pensacola and New Orleans, one season, then another, will ship entirely through Baltimore. Now, to get their London and their Glasgow business at the 25-cent rate, we are obliged to meet this competition through the eastern ports on the Liverpool business, otherwise it would have all been lost to eastern ports.

It is true the record shows that for the last three years no tobacco for Belfast or Dublin has moved through any other port than New Orleans, while for Liverpool there was transshipped at New Orleans, during the first 10 months of 1911, 2,807 hogsheads, as compared with 1,314 hogsheads via the eastern ports. Upon this showing it is contended that there is no necessity for a readjustment of the rates, because, even at the lower export rate to Liverpool, a considerable quantity of tobacco moves through the north Atlantic ports; while at the higher inland rate to New Orleans for Belfast, all of the tobacco moves via that route. The reason for this is not apparent, but the fact that the traffic seeks this route, while a strong argument for the reasonableness of the through rate is by no means conclusive of the nondiscriminatory effect of the rate to the port. There is no way by which we may unequivocally determine the amount of the through rate, nor the fact that such through rate has been actually and fully paid. To hold that defendants may make export rates varying with the different destinations, dependent upon competition created by ocean rates representing a spread of 50 per cent between the minimum and maximum, is to recognize a character of competition indefinite and indeterminable. That there is competition between the various ports is practically axiomatic, but we do not believe that as between the north Atlantic ports and New Orleans such competition, so far as regards tobacco from Owensboro and Henderson, is substantially dissimilar when the destination is Liverpool and when it is Belfast.

The record indicates that the lower export rates to New Orleans are granted to shippers upon presentation by them of through bills of lading, showing that the ultimate destination is Liverpool or Bristol, and if such destination later should be changed the railroad would not be advised thereof. The 22-cent rate, when for Bristol, applies only when transshipped via Liverpool, while the rate for Liverpool proper is 21.5 cents. The shipper might thus obtain for 21.5 cents transportation to New Orleans which, under the published tariff, should take a rate of 22 or 25 cents. And no method is suggested by which this means of defeating the application of the published rate can be avoided.

Moreover, the right claimed by defendants would afford unlimited opportunity to discriminate between shippers of tobacco within the United States. If one grower of tobacco sends his traffic to London and another to Bristol, and the railroad desires to favor the latter, all that would be necessary would be for it to publish a 20-cent rate on traffic destined to London and a 15-cent rate on traffic destined to Bristol. If the carrier may properly maintain for export to Liverpool a rate 3½ cents lower than for export to Belfast, why may it not so expand the difference between the rates as to substantially monopolize the export business in the hands of particular firms? Nor would such power as is contended for by defendants be limited to discriminations between growers of tobacco within the United States, for it would also put the export business of the United States at the mercy of the carriers, because it would enable them to determine to what foreign countries the exportation of tobacco should be encouraged and to what foreign countries it should be restricted. We believe it was never the intention of the Congress to place in the hands of the railroads any such control over the foreign commerce of the country.

The leading case in point, referred to by both sides, is *T. & P. Ry. Co.* v. *I. C. C.*, 162 U. S., 197. But obviously that case went no further than to decide that a carrier may lawfully make an import rate from a port in the United States to an interior destination less than its domestic rate from the same port to the same destination. The court treated the entire field of foreign commerce as a class different from domestic commerce. It did not undertake, nor was there involved, the determination of the propriety of different import rates where the points of origin were not the same, and we do not think the language of that opinion fairly may be considered to impose upon this Commission the impossible burden of examining into the circumstances and conditions that may affect transportation from every conceivable point on the globe to points in the United States. Few carriers publish the same export rates on traffic for Europe and for South or Central America, but except in the instant case we are not

now aware of any publication of varying export rates on traffic for a single foreign country. It may be, and upon this point we express no opinion, that we properly can consider the comparative differences in conditions affecting transportation for Europe and South America, for this is within the realms of practicability, but to say that we must determine whether the difference in conditions attaching to transportation to every point in England is sufficient to justify different export rates is to cast upon us the duty of inquiring into the circumstances affecting the transportation of property by the English railroads. If different rates may be made upon tobacco to New Orleans for export to Liverpool, Bristol, and London, respectively, it must follow that defendants may publish different export rates for every destination in England, and when this practice is extended to each point in the British Isles and then to every destination in Europe, it requires no stretch of the imagination to realize the futility of our regulation of export rates, control over which we are fully conceded. *Armour Packing Co.* v. *U. S.*, 209 U. S., 79.

Upon consideration of all the facts before us we are of opinion and hold that there is no substantial dissimilarity of circumstances and conditions surrounding the transportation of tobacco from Owensboro and Henderson, Ky., to New Orleans, La., for export to Liverpool, Bristol, or other European destinations; we are further of opinion that the present export rates charged by defendants upon tobacco from Owensboro and Henderson unduly prefer shippers of tobacco to Liverpool and Bristol, and unduly prejudice shippers of tobacco to European destinations other than Liverpool and Bristol. An order will be entered requiring defendants to cease and desist from the practices of which complaint is herein made.

The interveners have asked for reparation upon shipments which moved from Owensboro and Henderson to foreign ports and upon which the export rate to New Orleans is 25 cents. However, the original petition alleged a violation only of sections 2 and 3 of the act to regulate commerce, and the record does not contain any substantial evidence respecting the reasonableness of the rates involved, nor is it sufficiently definite to enable us to say to what extent, if any, the interveners have actually been damaged. No conclusion upon that point will be announced at this time, but the interveners will be allowed to offer such testimony as they deem proper in support of their allegation of damage.

No. 4060.

GAY COAL & COKE COMPANY ET AL.

v.

CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

No. 4061.

ETHEL COAL COMPANY ET AL.

v.

CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted December 1, 1911. Decided May 7, 1912.

It appearing that the causes of complaint have been removed since these cases were submitted, the complaints are dismissed without prejudice.

Campbell, Brown & Davis for complainants.

Enslow, Fitzpatrick & Baker and *H. T. Wickham* for Chesapeake & Ohio Railway Company.

Z. T. Vinson for Island Creek Railroad Company.

Report of the Commission.

Clements, *Commissioner:*

These complaints were heard together and the facts, as disclosed at the time of hearing and submission thereof, were as follows:

The Island Creek Railroad extends from Logan, W. Va., a point on the Guyandotte Valley branch of the Chesapeake & Ohio Railway, west to Holden, W. Va. It has 6 miles of main line and 12 miles of branches and sidings, and the capital stock is owned by the United States Coal & Oil Company (hereinafter referred to as the Coal & Oil Company), which operates 10 coal mines on its rails near Holden. The road was built primarily for the purpose of affording an outlet to the Chesapeake & Ohio Railway for the coal from mines of the Coal & Oil Company, which owns 30,000 acres of coal lands in the vicinity of Holden.

There are six other mines on the Island Creek road which are independent of the Coal & Oil Company, and two of these independent operators, the Gay Coal & Coke Company and Cora Coal & Coke Company, were the complainants in No. 4060. These complainants alleged that the Island Creek road's charge of $3 per car for

placing empty cars at the mines and hauling the loaded cars back to Logan, the junction with the Chesapeake & Ohio Railway, was unreasonable and unjustly discriminatory, and joint rates were demanded from the Island Creek mines to ultimate destination, in connection with the Chesapeake & Ohio from Logan. The rate from Logan and all mines in the Kanawha District located on the Chesapeake & Ohio, to Cincinnati, Ohio, is $1 per ton. A large part of the Island Creek coal is shipped originally to Cincinnati for distribution from that point. An unjust discrimination also was alleged in favor of the Coal & Oil Company in that because of its ownership of the Island Creek Railroad it secured transportation from its mines at $3 per car less than its competitors.

Defendant Chesapeake & Ohio Railway denied that the Island Creek Railroad was a common carrier and averred that its refusal to enter into joint rates with that road was in accord with its general practice as to all tap lines connecting with its rails; further averring that such joint rates would work an unjust discrimination against other mines similarly situated.

Defendant Island Creek Railroad denied that the $3 charge was not in fact paid by the Coal & Oil Company; denied any unjust preference to that company; and prayed that in the division of any joint rate which the Commission might establish the Island Creek road be allowed its then charge of $3 per car, which it contended was not unreasonable for the service performed.

In No. 4061 the complainants were the Ethel Coal Company, Gay Coal & Coke Company, Manitoba Coal Company, Logan Coal Company, Rex Coal & Coke Company, Price Coal & Coke Company, H. T. Wilson Coal Company, Cora Coal & Coke Company, and Fort Branch Coal Corporation. All of these mines except the Gay and Cora companies, which are Island Creek mines, are situated on the Chesapeake & Ohio Railway south of Logan, the junction of the Chesapeake & Ohio and Island Creek roads, on the so-called Dingess Run branch of the Chesapeake & Ohio. The Coal & Oil Company also owns the Island Creek Fuel Company (formerly the Guyan Valley Fuel Company), a corporation organized for and engaged in the one purpose of selling coal from Coal & Oil Company mines. The Fuel Company owned some 200 private cars, and the petition in this case alleged an unjust preference in the handling of and the rate applicable to these cars. This complaint was primarily against the Chesapeake & Ohio, which furnishes all other coal cars to the Island Creek mines and determines the mine ratings. It was alleged that these private cars were not counted against the Coal & Oil Company's mines in the general allotment in times of car shortage; that the allotment was not equalized as to the independent mines at the next distribution period; that mine ratings were not posted at Logan at

regular intervals; that a preferential rate of 25 cents per ton was accorded by the Chesapeake & Ohio to coal transported in these cars from Logan to Huntington, W. Va., for river shipment, whereas the local rate on coal carried in general equipment between the same points is 50 cents per ton; and that preferred handling was given such cars to the delay of other coal.

The answer of the Chesapeake & Ohio consisted of general denials and an averment that the service rendered by it on the Fuel Company's cars between Logan and Huntington is strictly intrastate.

The answer of the Island Creek Railroad consisted in the main of general denials.

Since these complaints were submitted the Chesapeake & Ohio Railway Company has, by lease, taken over the operation of the Island Creek Railroad as to shipments of coal originating on that line, and in a letter transmitting a copy of this lease agreement to the Commission these carriers jointly state:

We herewith file before the Commission a lease, made the 5th day of April, 1912, by which the Island Creek Railroad Company turns over its line of railway and all of its equipment, including private cars, to the Chesapeake & Ohio Railway Company, which on the 10th of April took charge of the property and is now operating it under the lease. In our opinion this settles all questions in controversy made by the record of these cases above referred to. In support of this opinion, we call to the attention of the Commission the following facts:

1st. The $3 switching charge is eliminated because the lease provides Kanawha district rate for all shippers on the line of the Island Creek Railroad Company.

2d. The fact that the Chesapeake & Ohio Railway Company has purchased and now owns the private cars mentioned in the above causes, and will treat them as a part of its car supply wipes out the question of preferential movement of such cars.

3d. The only remaining question was the 25-cent rate charged on coal for river shipment in the private cars. It necessarily follows that the fact that the Chesapeake & Ohio Railway Company now owns these cars and there will therefore be no private cars settles this matter, but in addition to this, the lease in terms provides that there shall be such a rate maintained open to all shippers of coal of this class hereafter to be carried in company cars for river shipment.

It was the intention of the Island Creek Railroad Company, and also the Chesapeake & Ohio Railway Company to settle all matters here in controversy, and it is our belief that this has been successfully accomplished, and that the complainants secure by this arrangement everything that they asked for in their petitions filed in these cases.

In view of this arrangement the Gay Coal & Coke Company has withdrawn from the complaint, and the other complainants, having under consideration similar action, submitted to the Commission the following:

The complainants in these proceedings, other than the Gay Coal & Coke Company, (the Gay Coal & Coke Company having authorized the withdrawal of its name, subject to the consent of the Commission, by our wire of the 11th instant)

request that we say to the Commission that they are not parties to any agreement touching any matter involved in these proceedings.

They are not willing to join in any dismissal, preferring to leave to the Commission's consideration and judgment the matters involved herein, together with the question whether the present situation, (information concerning which we are informed is to be filed with the Commission on the 15th instant), will fully assure to the complainants the relief to which they may be entitled, and adequately satisfy the requirements of the law.

It is thus the understanding of the Commission that the execution of this lease arrangement will remove all causes of complaint, and in this view, without passing upon the merits of these cases as of the time submitted, or upon the validity of this lease other than its general terms as removing the causes of complaint here involved, an order will be entered dismissing the complaints without prejudice.

No. 4041.

MERCHANTS & MANUFACTURERS ASSOCIATION OF BALTIMORE, MD., ET AL.

v.

PENNSYLVANIA RAILROAD COMPANY ET. AL.

Submitted November 9, 1911. Decided May 14, 1912.

1. While almost universally the charge for a switching service is on a per-car basis, the facts of record held insufficient to justify a finding that the assessment of class rates for switching at Baltimore unduly discriminates against that city as compared with cities where the per-car basis obtains.
2. Except where joint through rates are now in effect covering delivery to or from another carrier within the city of Baltimore, the existing class rates charged for interchanging traffic found to be unreasonable, and the case held open for 30 days to permit defendants to amend their tariffs.
3. Terminals are either open or they are not; and if a carrier holds itself out as ready to permit the use of its tracks at a certain charge, the fact that such charge may be prohibitive does not mean that the terminals are not open. On the contrary, it would seem to be a potent argument for the reduction of charges for the use of tracks or terminal facilities already extended.
4. That these defendants offer each to the other the use of their respective tracks or terminals is shown by the fact that freight is actually interchanged after its arrival in Baltimore, and for this service charges are provided in tariffs published and filed both with this Commission and the Public Service Commission of Maryland. It follows that having ...ed to perform this service the charge therefor must be reasonable.

John B. Daish and *Hyland P. Stewart* for complainants.

William Ainsworth Parker for Baltimore & Ohio Railroad Company and Baltimore Belt Railroad Company.

Henry Wolf Biklé for Pennsylvania Railroad Company; Northern Central Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; and Union Railroad Company of Baltimore.

George Stewart Brown for Maryland & Pennsylvania Railroad.

Report of the Commission.

McChord, *Commissioner:*

This proceeding challenges the charges collected by defendants for the transfer or interchange of interstate traffic in carloads within the city of Baltimore. The petition and complainants' brief also refer to the charges collected for transferring freight between points on the same line after its arrival at Baltimore, and to certain reconsigning charges, but at most these charges are only inferentially attacked and no testimony as to their unreasonableness was presented. The following language taken from complainants' brief indicates the situation complained of:

> When a carload of interstate freight has arrived at one of the facilities or instrumentalities of transportation at Baltimore, such as a spur, siding, or yard, of one of the defendants, and it is desired to have the same placed at one of the instrumentalities or facilities of another defendant, that the present charges therefor are unreasonable, unjust, and discriminatory and in violation of the act to regulate commerce.

Defendants Union Railroad Company of Baltimore and Baltimore Belt Railroad are switching lines controlled respectively by the Pennsylvania Railroad and the Baltimore & Ohio Railroad. Each of the remaining defendants has physical track connection with the other either direct or by means of one of these switching lines. What are commonly known as switching charges are not effective at Baltimore, shipments being interchanged at certain class or commodity rates, in some instances jointly established to apply from the terminal of one carrier to that of another, and in others applicable from one terminal to the interchange track from which another class or commodity rate is assessed to the final terminal. It is the contention of complainants that these charges, frequently amounting to $30 or $40 per car, are unreasonable; that this interchange or transfer is merely a switching service for which, in practically all other cities, a flat charge per car is made; and that the construction of these rates on any other than a per-car basis discriminates against the city of Baltimore and its traffic. We are asked to prescribe switching rates of from $1 to $5 per car.

The defense is that the present rates are not unreasonable, and that the establishment of the rates prayed for will throw open the

terminals of each road to the other, a situation against which defendants are protected by section 3 of the act. As the latter defense is mainly relied upon, it will be disposed of first.

Section 3 requires every common carrier subject to the provisions of the act to accord all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and provides:

> But this shall not be construed as *requiring* any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

But if defendants are now allowing such use of their tracks or terminal facilities, the proviso of section 3 can have no application here. It is argued that under the present high rates these terminals are not now open, but that they would be, under the low per-car charges sought by complainant. In expounding this theory, counsel for one of the defendants stated: "We have, by the fixing of $30 per car, done what section 3 tells us to do—protected ourselves against our competitors." It was explained that a low switching charge would be readily absorbed by a competing carrier possessing inadequate terminals or no terminals at all, and the carrier owning the terminals would lose the revenue it might otherwise obtain for the line haul. It is admitted, however, that there was no distinction between the collection of charges for interchanging competitive and noncompetitive traffic. Consequently there are instances where it is not possible for the terminal road to get a line haul. But terminals are either open or they are not; and if a carrier holds itself out as ready to permit the use of its tracks at a certain charge, the fact that such charge may be prohibitive does not mean that the terminals are not open. On the contrary, it would seem to be a potent argument for the reduction of charges for the use of tracks or terminal facilities already extended. But it is urged that if these terminals have been opened they have been opened to the shippers on the lines of other carriers and not to the carriers themselves. If this means that the terminals are open to receive cars tendered by another carrier but not open to the trains or locomotives of such carrier, the distinction has no application here for no such use is sought and none could follow any order that we might issue in this proceeding.

That these defendants offer each to the other the use of their respective tracks or terminals is shown by the fact that freight is actually interchanged after its arrival in Baltimore, and for this service charges are provided in tariffs published and filed both with this Commission and with the public service commission of Maryland. It follows, that having elected to perform this service, the charge therefor must be reasonable.

In considering the question of reasonableness we shall confine ourselves to shipments arriving in Baltimore over one line consigned to a point on another line, or shipments arriving over one line and reconsigned under proper tariff authority to points on another line, for it can readily be assumed that under the illustration taken from complainants' brief cases will arise where the interstate character of the shipment has terminated before its intracity movement begins. The reasonableness of these charges as applied to intrastate shipments is now before the public service commission of Maryland upon complaint filed by the same interests. From most points on foreign roads the Baltimore rate is applicable for delivery in Baltimore on any of the lines parties to the rate. Thus further narrowed, the issue is the reasonableness of the charges for interchanging traffic originating on a line which reaches Baltimore and is there delivered on the tracks of another carrier.

While all the lines entering Baltimore are made defendants, the complaint is directed chiefly at the Baltimore & Ohio Railroad and the Pennsylvania Railroad. We shall take Camden station on the Baltimore & Ohio and Bolton station on the Pennsylvania as representative Baltimore terminals of those lines. For the transfer of shipments between those stations prior to December 15, 1910, class rates were charged from and to the interchange track, as follows:

Class	1	2	3	4	5	6
B. & O.	6	6	6	5	5	5
Pa	6	5	5	4	4	4

Effective December 15, 1910, the following joint rates were established:

Class	1	2	3	4	5	6
Rate	11	10	8	7	6	5

The class rates charged by the Western Maryland Railroad to junctions not more than five miles distant are as follows:

Class	1	2	3	4	5	6
Rate	6	6	5	5	4	4

From such junctions another class rate applies to the point on the tracks of the final carrier.

Only the last three classes embrace freight which ordinarily moves in carloads, the fifth-class rate being best representative. Applied to a weight of 40,000 pounds, these rates result in charges of $24 per car from Camden to Bolton, $32 from Bolton to Hillen station on the Western Maryland, and $40 from Camden to Hillen.

From a few places joint rates are made by the Baltimore & Ohio and the Pennsylvania which permit delivery upon either line at the flat Baltimore rate. From points east of Pittsburgh these defendants

have in effect both local and joint rates, the local rates being for delivery on the tracks of the originating carrier, while the joint rates are for delivery on the tracks of the other. These joint rates are made by adding to the local rate the following differentials:

Class	1	2	3	4	5	6
Rate	5	5	2	2	2	2

A somewhat similar scheme for making joint commodity rates has also been proposed, and, to some extent, executed. Under this scheme the 2-cent per 100 pounds, or 40-cent per ton fifth class differential, was taken as a basis for the construction of joint commodity rates and graduated as follows: Where the line-haul rate was $2 or more per ton, the differential would be 40 cents; where $1 and under $2, 30 cents; where under $1, 20 cents. It is stated, however, that this is not an automatic scale but has been suggested merely as a basis. The construction of joint commodity rates upon this scale depends upon the carrier's opinion as to the necessity therefor. The shipper is required to make application to the carrier and satisfy it that the nature of the commodity and the points between which it is to move entitle it to inclusion in the preferred group. Complainants specifically aver, however, that no attack is made on these joint rates. Nevertheless, they are helpful in considering the reasonableness of the charges existing where no joint rates apply. For instance, the class differential of 2 cents applied to a weight of 40,000 pounds makes an additional charge of $8 per car, as against $24 per car under the existing joint intracity rates. The commodity differential applied to the same weight results in charges of $8, $6, and $4 per car, dependent upon the line rate. Of course we recognize that these differentials, being portions of joint rates, may not represent the delivering carrier's entire division. However, it is the aggregate charge with which the shipper is concerned and it is of little interest to him whether that aggregate be determined by a joint rate or by a combination of rates. With respect to defendants other than the Baltimore & Ohio and the Pennsylvania, no such joint rates have been established. With the exception of Philadelphia, Baltimore, and Pittsburgh, charges for the interchange of carload traffic are in most instances collected upon a flat per-car basis varying from $1 to $7. At Philadelphia, and in some instances at Boston, charges are collected at a rate per 100 pounds which, however, does not exceed 3 cents. So far as we are advised, at no place are charges assessed upon a basis similar to that obtaining at Baltimore.

These carriers have opened these channels of interchange between their respective terminals and, as to traffic from some territories, provided charges which are not shown to be unreasonable for interchange service. On traffic from other territories they have

fixed charges which obviously are intended to be prohibitory. This we regard as unduly discriminatory.

It was urged by defendants that if any of the existing rates were unreasonable they should be corrected by the establishment of joint rates constructed upon the basis we have already considered. It was stated that under this joint-rate arrangement the delivering carrier receives a division greater than the differential over the single-line rate, and also has a voice in the making of the joint rate. While almost universally the charge for a switching service is on a per-car basis, irrespective of the weight and character of the commodity, we are unable, on this record, to find that the basis complained of unduly discriminates against Baltimore as compared with cities where the per-car basis obtains, but we are of the opinion and hold that except where joint through rates are now in effect the class rates collected by defendants for the interchange of interstate traffic in carloads in the city of Baltimore are unreasonable. We are further of opinion that a reasonable charge for this service should not exceed the flat Baltimore rate by more than the following: On first and second classes, 5 cents per 100 pounds; on third, fourth, fifth, and sixth classes, and upon commodities not moving under class rates, 2 cents per 100 pounds.

By this finding we must not be understood as approving the class as compared with the per car basis, a question upon which we do not feel warranted in passing on the facts now before us.

If, within 30 days, defendants' tariffs are not brought into conformity with these findings, we will take such further steps as may be necessary in the premises.

Complainants ask that we define the switching limits of Baltimore, but no testimony was introduced upon which a finding might be based, and none will now be made.

No. 1180.

HENRY E. MEEKER AND CAROLINE H. MEEKER, CO-PARTNERS, TRADING AS MEEKER & COMPANY,

v.

LEHIGH VALLEY RAILROAD COMPANY.

No. 3235.

HENRY E. MEEKER

v.

SAME.

Submitted February 27, 1912. Decided May 7, 1912.

Reparation awarded on account of unreasonable and discriminatory rates charged for the transportation of anthracite coal from the Wyoming region in Pennsylvania to Perth Amboy, N. J., in accordance with the conclusions announced in *Meeker* v. *L. V. R. R. Co.*, 21 I. C. C., 129.

William A. Glasgow, jr., for complainants.

Frank H. Platt, George W. Field, and *E. H. Boles* for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, *Commissioner:*

The original report in No. 1180, 21 I. C. C., 129, disposed of all the questions at issue except the claim for reparation, and the case was held open for the purpose of securing further information regarding that feature. A further hearing has been held, and complainant has presented exhibits showing the total number of tons of each variety of coal shipped and the amount of reparation due on such shipments. These exhibits have been examined by defendant and admitted to be correct.

In our original report we found that the rates charged complainant for the transportation of anthracite coal from the Wyoming coal region in Pennsylvania to Perth Amboy, N. J., during the period from November 1, 1900, to August 1, 1901, were unjustly discriminatory in violation of section 2 of the act to the extent that they exceeded the rates contemporaneously charged the Lehigh Valley Coal Company under the contract then in effect between that company and

defendant; and we further found that the rates in effect from August 1, 1901, to July 17, 1907, were unreasonable to the extent that they exceeded rates of $1.40 per gross ton on prepared sizes, $1.30 on pea, and $1.15 on buckwheat.

On basis of our conclusions in the former report, and upon consideration of the evidence adduced at the hearing upon the question of reparation, we now find that during the period from November 1, 1900, to August 1, 1901, complainant shipped from the Wyoming coal region of Pennsylvania to Perth Amboy, N. J., 55,257.75 tons of coal of prepared sizes, 16,689.76 tons of pea coal, 11,448.93 tons of buckwheat coal, and 4,926.77 tons of rice coal, and paid charges thereon, amounting to $129,989.18, at the rates found to have been unjustly discriminatory; that complainant has been damaged to the extent of the difference between the amount which he did pay and $118,979.85, the amount which he would have paid had he been given the benefit of the rates applied by defendant to similar shipments of the Lehigh Valley Coal Company; and that he is, therefore, entitled to an award of reparation in the sum of $11,009.33, with interest thereon from August 1, 1901. We find further that from August 1, 1901, to July 17, 1907, complainant shipped from the Wyoming coal region in Pennsylvania to Perth Amboy, N. J., 246,870.15 tons of coal of prepared sizes, 106,051.09 tons of pea coal, and 87,250 tons of buckwheat coal, and paid charges thereon amounting to $685,375.27, at the rates found to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which he did pay and $626,945.62, the amount which he would have paid at the rates found reasonable, less $193.20 deducted by stipulation of all parties on account of certain claims already paid; and that he is, therefore, entitled to an additional award of reparation in the sum of $58,236.45, with interest, amounting to $27,750.64, on the individual charges comprising said sum from the dates of payment thereof to September 1, 1911, together with interest on said sum of $58,236.45 from September 1, 1911.

With the exception of the reparation features, the issues involved in No. 3235 have been passed upon by the Commission in No. 1180. The latter case covered the period from November 1, 1900, to July 17, 1907, while the instant case is designed to secure reparation upon shipments which moved between July 17, 1907, and April 13, 1910. The petition in the present case, therefore, resolves itself into a prayer for reparation on shipments moving subsequent to the period covered by the original report, on basis of the conclusions announced in that report.

In No. 1180 the complaint attacked the reasonableness of rates charged by defendant for the transportation of various sizes of

anthracite coal from the Wyoming coal region in Pennsylvania to Perth Amboy, N. J., and asked reparation. On June [illegible], 1911, the Commission rendered its decision in that case. The petition in the present case was filed [illegible], or about a year prior to our decision in No. [illegible], as before stated. It attacks the same rates that were found unreasonable in No. [illegible] and asks reparation on shipments moving from [illegible] to April [illegible], 1911.

The former case was filed with the Commission within one year from the passage of the law of June [illegible], 1906, and consequently was not limited to causes of action that accrued within two years prior to the filing of the complaint. The present proceeding, however, was instituted more than one year subsequent to the passage of that law, and is therefore subject to the two-year limitation of the statute. Complainant's prayer for reparation on shipments moving more than two years prior to the filing of the complaint in this case must be denied.

On basis of our decision in No. [illegible] and upon consideration of the evidence submitted at the hearing of the present case regarding the amount of reparation due complainant, we now find that the rates exacted by defendant for the transportation of anthracite coal from the Wyoming coal region in Pennsylvania to Perth Amboy, N. J., during the period from April 13, [illegible], to April 13, 1910, were unreasonable to the extent that they exceeded rates of $1.40 per gross ton on prepared sizes, $1.[illegible] on pea, and $1.15 on buckwheat; that complainant shipped from said point of origin to said destination during the period above set forth, 46,772.02 tons of coal of prepared sizes, 26,972.[illegible] tons of pea coal, and 22,661.09 tons of buckwheat coal; that complainant paid charges thereon, amounting to $136,663.41, at the rates herein found to have been unreasonable, and was damaged to the extent of the difference between the amount which he did pay and $125,849.81, the amount which he would have paid at the rates above found reasonable; and that he is, therefore, entitled to an award of reparation in the sum of $10,813.60, with interest amounting to $1,526.53 upon the individual charges comprising said sum from the dates of payment thereof to September 1, 1911, together with interest on said sum of $10,813.60 from the 1st day of September, 1911.

The exhibits showing details respecting the shipments upon which reparation is asked are too extensive to be set forth in this report.

[illegible] much as the accuracy of the figures in said exhibits respecting [illegible] ments made, freight charges paid, and reparation due, is [illegible] of record by defendant, we deem it unnecessary to make [illegible] ings respecting the numerous shipments involved.

[illegible] ll be issued in accordance with the findings herein

No. 1252.

FELS & COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted February 7, 1912. Decided May 14, 1912.

Upon petition for reparation on all interstate less-than-carload shipments of common soap by complainant since April 10, 1903, from Philadelphia to points in official classification territory; *Held*, That of the three defendants against whom complainant has elected to prosecute its claim only the Baltimore & Ohio Railroad is bound by the finding in the *Procter & Gamble case*, 9 I. C. C., 440, that in view of the finding in that case charges by this defendant on the shipments in question were unreasonable so far as they exceeded fourth-class rates, and that complainant's claim is not barred and reparation by the Baltimore & Ohio Railroad will be directed.

J. H. Hayden and *G. W. Dalzell* for complainant.

Lawrence Maxwell, *G. S. Patterson*, *H. W. Biklé*, and *W. A. Parker* for defendants.

REPORT OF THE COMMISSION.

LANE, *Commissioner:*

The original petition in this case was filed on August 28, 1907, against eight carriers and asked that these carriers be compelled to refund to the complainant, for alleged overcharges on less-than-carload shipments of common soap, from Philadelphia to points in official classification territory the difference between the rates charged under rule 26 of official classification, which were "20 per cent less than third class but not less than fourth class" and the rates applicable under fourth class which it was alleged the Commission in *Procter & Gamble Co.* v. *C. H. & D. Ry. Co.*, 9 I. C. C., 440, had determined to be the just classification. This original petition was hastily drawn in an effort to get it filed before the statute of limitations, fixed in the amendments of 1906, had run. The result was that it gave no specific enumeration of the shipments upon which the alleged overcharges had been made, but contained a promise that such a detailed schedule of the overcharges would be filed shortly.

On June 24, 1908, an amended petition was filed in which the complainant elected to prosecute its claim against but three of the original

eight defendants—the Philadelphia, Baltimore & Washington Railroad Company, the Baltimore & Ohio Railroad Company, and the Philadelphia & Reading Railway Company—these being the originating carriers of all the shipments in question. This was a formal petition properly drawn, demanding reparation on all less-than-carload shipments of common soap by the complainant between April 10, 1903, when the decision in the Procter & Gamble Company case was rendered, and August 1, 1907, when rule 26 was withdrawn and rule 28 was substituted therefor. Annexed to this petition were the schedules promised in the original petition, setting out all the less-than-carload shipments as to which refunds were claimed. This petition alleged that the charges on these shipments were unreasonable and in violation of the Commission's order of April 10, 1903.

The answers of the defendants called attention to these facts: (1) That certain of the shipments specified in the schedules were wholly intrastate. By stipulation it was subsequently agreed as to just which shipments were interstate and so within the Commission's jurisdiction. (2) That of the three named defendants only the Baltimore & Ohio Railroad Company was a party to the Procter & Gamble Company suit. (3) That a question was involved as to whether the complainant's claim for reparation was not wholly, or at least in part, barred by the act as amended in 1906. There are thus suggested two issues which we are called upon to decide—first, whether the findings of this Commission in the *Procter & Gamble case* may be considered as making the fourth-class rate a criterion of reasonableness on less-than-carload shipments of soap by which any or all carriers in official classification territory should have been guided after April 10, 1903, for such shipments. Secondly, assuming the first proposition to be decided in the affirmative, which would establish complainant's right to have demanded some reparation at one time, has this right been barred in whole or part by the statute of limitations enacted in 1906?

The *Procter & Gamble case* arose as follows: On January 1, 1900, soap in carloads was raised from sixth to fifth class and in less than carloads from fourth to third class. On March 10, 1900, the less-than-carload rates were again changed by rule 26, official classification, to "20 per cent less than third class, but not less than fourth class." The Procter & Gamble complaint was filed because of these increases against several carriers in official classification territory including the Baltimore & Ohio Railroad but none of the other defendants herein. The report of the Commission, written by Commissioner Knapp, held that since the carriers had voluntarily carried less-than-carload shipments at fourth-class rates during the previous

10 years, a presumption arose which had not been rebutted that such a classification was reasonable, and the opinion concluded:

> It follows that the carriers should cease and desist from enforcing the 20 per cent less than third-class rates on less-than-carload soap and from charging complainant and other soap manufacturers higher than fourth-class rates upon such shipments of that commodity. A suitable order dismissing so much of the complaint as relates to rates on common soap in carloads, and sustaining that portion of the complaint which refers to rates on common soap in less than carloads and asks for restoration of fourth-class rates on less-than-carload lots, will be entered and served.

The Commission at that date, however, had no authority to prescribe rates for the future, so that, contrary to the above announcement, the order as finally drawn did not order in fourth-class rates, but merely required that the carriers should cease charging rates "20 per cent less than third class, but not less than fourth class." The carriers did not observe the order, but continued their existing rates, meanwhile contesting the validity of the order in the courts. The Supreme Court on May 13, 1907, in *C. H. & D. Ry. Co.* v. *I. C. C.*, 206 U. S., 142, upheld the Commission's order and thereafter the carriers in official classification territory withdrew the application of rule 26 as to less than carloads of soap and substituted therefor rule 28, effective August 1, 1907.

The complainant herein contends that the findings of the Commission in that case concerned the application of rates on less-than-carload lots of common soap throughout official classification territory, that consequently all the defendants herein were bound by it and without offering any evidence as to the unreasonableness of the specific rates paid by it to the defendants herein, the complainant demands reparation on all shipments carried for it by these defendants since the date of the Procter & Gamble order.

It is perhaps not surprising that the complainant has been misled by the sweeping character of the findings in the *Procter & Gamble case.* In that opinion it was said, page 459—

> As the general question involved is the propriety of the classification of soap and rates thereon in official classification territory as adopted by the defendants and other carriers and as affecting soap manufacturers and soap traffic generally in that territory, the essential questions of fact are those pertaining to the reasonableness and justice of placing soap in fifth class, instead of sixth, for carloads and in 20 per cent less than third class, instead of fourth class, for less than carloads, and these matters are certainly not controlled by any special advantages accruing to complainant from this contract or in other respects. * * * The ultimate question in the case, however, is the legality of the present classification of soap and the resulting rates on that traffic not only from the standpoint of complainant but that of all other soap producers affected by such classification, and necessarily the great mass of testimony in the case has been considered with reference to the determination of that question.

Again, on page 470—

The classification change complained of was adopted and has since been enforced by practically all railroad carriers in official classification territory for the declared purpose of benefiting all such carriers through resulting increase of revenue; and, as above stated, the main question here presented is whether the higher classification of soap is just and reasonable as applied not only to complainant's business but to that of all other soap manufacturers and shippers in the section in which this classification is enforced.

And in stating its conclusion the Commission said, page 486—

The chief question here is as to the justice of the change in the classification of soap not only as regards the Procter & Gamble Company but as affecting all soap shippers in this classification territory, for we could rightfully make no order respecting such change in favor of complainant which would not apply with equal force on shipments of other soap manufacturers in official classification territory.

It is very clear, however, that the Commission in that case had no warrant for announcing such broad findings. It has never been supposed that the Commission had authority to make findings as to the rates or practices of a particular carrier without giving that carrier an opportunity to defend itself. Section 13 of the act required in 1903 (as it still does) that any carrier complained of on any ground should be supplied by the Commission with a copy of the charges and be given an opportunity to answer. It is our view, therefore, that while this opinion purports to make findings of facts as to the application of rule 26 by all carriers in official classification territory its findings as a basis for the awarding of damages are appropriate only to the extent that they apply to the particular carriers which were then before it. It follows that of the present defendants only the Baltimore & Ohio Railroad was bound by the findings of facts in that case.

As to the Baltimore & Ohio Railroad it was clearly subject to the order to cease and desist from charging rates applicable under rule 26, and this order was sustained by the Supreme Court. The Baltimore & Ohio Railroad admittedly disobeyed this order from April 10, 1903, to August 1, 1907, and its charges during this period were undoubtedly unlawful. But does it follow that the complainant on the present record can be awarded reparation? We believe so. The record in this case contains a complete schedule of all the charges alleged to have been unreasonable. The Commission's findings in the *Procter & Gamble case* established that fourth-class rates were the reasonable maximum rates to be charged by this defendant on such shipments. Although the proposition was disputed by the defendant, yet is seems to us clear that while the Commission at that date had no authority to fix future rates it was justified in making a finding as to what rates would be reasonable, and having done so

it is proper for us to accept this finding as conclusive without requiring other evidence as to what would have been reasonable rates. Furthermore the complainant offered evidence tending to show that the conditions affecting these rates had not changed between April 10, 1903, and August 1, 1907, and the defendant offered no evidence to rebut the presumption that the finding made by the Commission in 1903 continued sound. As to the one defendant which is bound by the finding in that case, it is our view that it overcharged the complainant on all shipments between April 10, 1903, and August 1, 1907, on which it collected rates higher than fourth class.

In 1911 the complainant filed a supplemental petition asking reparation on all less-than-carload shipments by it from August 1, 1907, when rule 28 went into effect, down to April 30, 1911. This petition, however, was filed four years after the original petition; it involves a classification rule which has never been investigated and as to which the Commission would not deem it wise to pass judgment without further hearing. The complainant submitted tables tending to show that the rates applying under this rule are on the whole higher than those formerly applicable under rule 26, and that the volume of traffic and revenue by the defendant had not changed, but so many elements as to which no evidence has been taken may affect the reasonableness of a rate that we feel warranted in making no finding as to the reasonableness of rates under rule 28 without further hearing.

Having found that the charges of the Baltimore & Ohio Railroad were unreasonable and discriminatory from April 10, 1903, to August 1, 1907, to the extent that they exceeded fourth-class rates, we come to the second issue in this case, namely, whether the right to reparation possessed by complainant prior to the statute of limitations introduced by the amendment of 1906 has since been barred by operation of that statute.

In Conference Ruling Bulletin No. 5, rule 10, the Commission announced the view that—

> Claims filed with the Commission since August 28, 1907, must have accrued within two years prior to the date when they are filed; otherwise they are barred by the statute. Claims filed *on* or before August 28, 1907, are not affected by the two years' limitation.

We have considered the objections to this view suggested by the defendant. We do not believe that the decision in *United States* v. *Standard Oil Co.*, 148 Fed., 719, is applicable to the present situation, since the question in that case was as to the date of repeal of a penal statute, and the court properly adopted that construction most favorable to the offender. In the present case, however, we are asked to preserve a right and prevent a forfeiture, and it is our view that a

liberal construction of the statute is the only proper one. Accordingly we still adhere to the view announced by us in 1907 in the above conference ruling.

It remains to be considered whether the original petition filed by the complainant on August 28, 1907, was a sufficient statement of the complainant's claim. This petition was inartificially drawn. But the question is not as to its form, but its substance. Did it state a good cause of action, giving sufficient detail to fully advise the defendants of exactly the basis and amount of the claim for reparation? It named the complainants and defendants; stated that the shipments involved were less-than-carload lots of common soap shipped by them over defendant's lines from Philadelphia; stated the classification under which rates were charged and the classification under which the rates should have been charged, and promised to file shortly a detailed description of each shipment and a complete list of all overcharges. Was this petition sufficient to save the right of the complainant? That the amount of reparation claimed was not set forth and that the shipments upon which reparation was claimed were not described in more detail, we believe did not vitiate the petition. If this information affected the merits of complainant's claim, or if affecting as it did the extent of the claim it were not accessible to the defendants, or if complainant were chargeable with laches in not having a full statement of its claim prepared by the last day of grace allowed by the proviso, we might be justified in dismissing this petition. But none of these things was true.

The defendant was advised that it had wrongfully collected sums of money from the complainant; it was advised exactly why these charges were wrongful; and it had in its own possession a record of all shipments of complainant and a record of all the overcharges on these shipments. Furthermore, there can be no criticism against complainant for not having this information compiled sooner because the validity of the Commission's order of April 10, 1903, was not finally determined by the Supreme Court until May, 1907; so that the complainant had less than three months in which to prepare and file its petition between the time when it was clear complainant had a cause of action and the time when such cause of action would be barred. It does not appear that the defendant has been in any way prejudiced by the complainant's failure to file the schedules with its original petition. We therefore conclude that while the original petition was imperfect, yet it stated a good cause of action, and in view of the circumstances of this case it should be deemed to have stopped the running of the statute.

It follows from the above conclusions that the complainant is entitled to reparation on all interstate less-than-carload shipments of

common soap carried for it from Philadelphia by the Baltimore & Ohio Railroad Company between April 10, 1903, and August 1, 1907. By stipulation the parties have agreed that the charges on such shipments in excess of fourth-class rates amounted to $887.76. An order will be entered against this carrier directing the payment of this amount, with interest from August 28, 1907.

CLARK, *Commissioner*, dissenting:

This complaint and the majority opinion are based upon the *Procter & Gamble case*, 9 I. C. C., 440.

As stated in the majority report, the Commission found in that case that common soap in less-than-carloads ought to be rated not higher than fourth class. But the order of the Commission, which went as far as the Commission then had power to go, required the defendants to cease and desist from charging "20 per cent less than third class but not less than fourth class."

After the Supreme Court had sustained that order, the Commission acquiesced in the establishment by the defendants of rule 28, and the application of that rating has not since been complained of.

I am not able to agree with the majority report for the reason that it proposes to award reparation on the basis of fourth class, which is not now and has not been since January 1, 1900, the lawful classification of such shipments. I feel that the maximum amount of reparation that can properly be awarded this complainant is measured by the difference between the rates which it did pay and the rates which it would have paid under rule 28.

No. 4482.

FRED W. WOLF COMPANY

v.

MALLORY STEAMSHIP COMPANY ET AL.

Submitted March 1, 1912. Decided May 7, 1912.

The commodity shipped from New York, N. Y., to Pearsall, Tex., was granulated cork, and the first-class rate of $1.72 per 100 pounds should have been applied instead of rate of $3.44 per 100 pounds, applicable to cork shavings. Reparation awarded.

J. P Mitchell for complainant.
J. B. Payne for defendants.

Report of the Commission.

By the Commission:

The complainant, a corporation with principal office at Chicago, Ill., is engaged in manufacturing refrigerating and ice-making machinery and installing ice-making plants. By petition, filed October 7, 1911, it alleges that an unreasonable rate was charged for the transportation of 74 bags of granulated cork, from New York, N. Y., to Pearsall, Tex. Reparation is asked.

The shipment, weighing 8,008 pounds, moved June 2, 1910, via defendants' lines as alleged and was billed as granulated cork, on which the first-class rate of $1.72 per 100 pounds, New York to Pearsall, was applicable. The movement was via Galveston, Tex., and upon its arrival at that point a freight inspector ruled that the commodity should be classed as cork shavings, not compressed, taking the double first-class rate, and freight charges, amounting to $275.48, assessed at the $3.44 rate, were paid by complainant.

The question presented for determination herein is whether the shipment consisted of "granulated cork" or "cork shavings." Granulated cork is a by-product, or waste, left after punching out corks from the bark, while cork shavings are shaved from a round cork in the tapering process, the value of the latter commodity being about three times that of granulated cork. The lightest kind of granulated cork weighs approximately 100 pounds to a 3-bushel bag, such as was used in this shipment, whereas a 3-bushel bag of cork

shavings weighs from 35 to 40 pounds, so that it was manifestly impossible to ship 8,008 pounds of cork shavings in the 74 bags which held the shipment. The record shows that the price quoted and the invoice were for granulated cork, and the employee who attended to shipping the cork states that the shipment consisted of granulated cork. The commodity was intended for use in the construction of an ice-making plant at Pearsall, and the contract therefor specified that granulated cork should be used for insulation. The evidence shows that cork shavings are not used for that purpose.

The uncontradicted testimony establishes complainant's contention, and we find that the shipment was granulated cork and therefore the $1.72 rate should have been applied. We further find that complainant made the shipment in accordance with the above statement of facts and paid charges thereon at the rate found not to have been applicable; that complainant was damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate which should have been applied; and that it is, therefore, entitled to an award of reparation in the sum of $137.74, with interest from June 13, 1910. An order will be entered accordingly.

No. 3721.

ATLANTIC REFINING COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted April 21, 1911. Decided May 7, 1912.

Rate of 15 cents per 100 pounds for transportation of petroleum oil in carloads from Philadelphia, Pa., to Utica, N. Y., found to have been unreasonable so far as it exceeded 13½ cents per 100 pounds. Reparation awarded.

John W. Liberton for complainant.

William L. Kinter for Philadelphia & Reading Railway Company.

Jacob Aronson for New York Central & Hudson River Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the oil business at Philadelphia, Pa. By petition, filed December 23, 1910, it alleges that the rate exacted by defendants for the transportation of certain carloads of petroleum oil from Philadelphia, Pa., to Utica, N. Y., was unreasonable. Reparation is asked.

Between May 12, 1909, and March 30, 1910, complainant shipped from Philadelphia to Utica 33 carloads of petroleum oil, the aggregate weight of which was 967,680 pounds. Freight charges amounting to $1,306.36 were prepaid, based on a rate of 13½ cents per 100 pounds. In accordance with complainant's specific routing instructions all of these cars moved via the Baltimore & Ohio Railroad, Philadelphia & Reading Railway, Lehigh Valley Railroad, and New York Central & Hudson River Railroad.

Prior to May 7, 1909, a joint commodity rate of 13½ cents was applicable to shipments of oil, in carloads, from Philadelphia to Utica, via the route designated by complainant and also via the Baltimore & Ohio, Philadelphia & Reading, and New York Central & Hudson River railroads. Effective May 7, 1909, this rate was canceled via the route specified by complainant and was left to apply only via the Baltimore & Ohio, Philadelphia & Reading, and New York Central & Hudson River railroads. Consequently a class rate of 15 cents was applicable via the route over which these shipments moved; and based upon this rate additional charges, amounting to $145.18, were collected June 14, 1910. Complainant had no par-

ticular reason for routing these shipments in connection with the Lehigh Valley, and did so only because it had made other shipments via that route at the 13½-cent rate and was not aware that via the route specified such rate did not apply. Defendants also appear to have been negligent, for prepayment of freight charges was accepted at the 13½-cent rate and the shipments transported under that rate for almost a year after the rate had been increased to 15 cents.

Defendants state that when the 13½-cent rate was first published in connection with the Lehigh Valley, the Philadelphia & Reading and the New York Central & Hudson River had no physical connection by which a through route for this traffic might have been established. Later a connection was made at Newberry junction, Pa. Via this route the entire line haul is performed by the Philadelphia & Reading and the New York Central & Hudson River roads, the Baltimore & Ohio performing only a switching service at Philadelphia. After the establishment of this through route the joint rate in connection with the Lehigh Valley was canceled.

For some time previous to the transportation of the shipments under consideration the defendants had applied a rate of 13½ cents over the route by which this traffic moved. They received and transported these shipments for a prepaid rate of 13½ cents per 100 pounds. In our opinion these facts amply justify the Commission in finding that 13½ cents was a reasonable rate to have been applied to the transportation of these shipments. Had the defendants pointed out to the complainant that another route was available for the movement of their traffic at this rate, but that the old rate had been withdrawn from the designated route, and had the complainant notwithstanding this insisted upon the movement of its business by the route which it took, a different question would be presented.

The complainant does not ask the establishment of the 13½-cent rate by this route, and since the route now open is admittedly a satisfactory one, we see no reason why any order should be made for the future.

Under all the circumstances, we are of opinion and find that the charges assessed upon complainant's shipments were unreasonable to the extent that they exceeded charges which would have accrued at a rate of 13½ cents per 100 pounds. We further find that complainant made the shipments in accordance with the foregoing statement of facts; that it paid charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges which it did pay and the charges which would have accrued at the rate herein found reasonable; and that it is, therefore, entitled to reparation in the sum of $145.18, with interest from June 14, 1910.

An order will be issued accordingly.

No. 4465.

WISCONSIN STATE MILLERS' ASSOCIATION

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.

Submitted March 18, 1912. Decided April 8, 1912.

The withdrawal of proportional rates on grain and grain products from Kansas City, Omaha, and Council Bluffs to certain milling points in central and eastern Wisconsin leaving local rates only in effect held not to result in any unlawful discrimination in favor of Chicago and Milwaukee millers.

E. J. Lachmann for complainants.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

C. C. Wright, Edw. M. Hyzer, and *C. A. Vilas* for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

The complainant association comprises about 35 merchant millers in the central and eastern part of Wisconsin whose mills have a daily capacity of about 10,000 barrels. Certain points in this territory, among which Portage, Oshkosh, Neenah, Appleton, Green Bay, Grand Rapids, and Wausau are more or less prominent, have long been grouped with Chicago and Milwaukee in class and commodity rates on general merchandise from the Missouri River. They have also been grouped with those cities with respect to rates on grain and grain products; as long ago as 1904 the St. Paul published a proportional rate of 12 cents from Council Bluffs to Chicago, Milwaukee, and to certain Wisconsin points in the district described; the North Western in 1905 established proportional rates to Chicago and Milwaukee, but it was not until March 16, 1908 that they were made to apply to points north of Milwaukee and Watertown. Prior to those dates the points in question took the local Chicago rates of those lines on grain and grain products from the Missouri River. This local schedule has fluctuated from time to time but is lower to-day than it ever has been.

On May 15, 1911, tariffs were filed by the St. Paul and North Western withdrawing their proportional rates on grain and grain products to

Wisconsin points. The result was to increase the rate from Omaha and Council Bluffs from 12 cents to the local rate of 15¾ cents and to 14¾ cents from Kansas City. The proportional rates to Chicago and Milwaukee were not disturbed, and the complaint is that the withdrawal of the proportional rates to these Wisconsin points has resulted in a discrimination against the millers there in favor of the millers of Chicago and Milwaukee. No complaint is made as to the reasonableness of the local rates; on the contrary it was expressly stated at the hearing that the Wisconsin millers could get along favorably under them except for the alleged discrimination involved in the retention of the proportional rates to Chicago and Milwaukee.

On the part of the defendants, upon whom rested the burden of justifying the increased rates, the history of the adjustment was explained at some length. It was stated that the extension of proportional rates to the territory north of Milwaukee came about through an inadvertence that did not come definitely to the attention of the carriers until complaint was made, in a recent proceeding before this Commission, that the application of a proportional rate of 12 cents from the Missouri River to Wisconsin points, a distance of 700 miles, while the rate to Duluth was 15 cents for a distance of but 600 miles, was a discrimination against the millers of Duluth. After a careful investigation by the defendant carriers the conclusion was reached, as we are advised, that the proportional rates to the Wisconsin points should be withdrawn, and that action was taken, as stated, on May 15, 1911. The effect was not felt at once by the complainants, because they had on hand enough transit billing to give them the benefit of the old rates for some months; and, furthermore, some of the carriers did not at once follow the lead of the St. Paul and North Western. The Burlington and the Green Bay & Western continued to maintain the proportional rates until September 25 and the Rock Island and Soo line until November 1, 1911. The mills located on these roads, therefore, continued to enjoy the Chicago and Milwaukee proportional rates for several months after they had been withdrawn in connection with the North Western and St. Paul.

The admission of the complainants that they do not contend that the present charges are unreasonable relieved the defendants of the burden of justifying them and leaves for consideration only the question whether the lower proportional rates to Milwaukee and Chicago result in any discrimination against the millers of the Wisconsin towns.

We have long been familiar with the competitive nature of rates governing the movement of grain and grain products from the Missouri River to the Atlantic seaboard; and the claim here set forth that the 12-cent proportional rate to Chicago and Milwaukee results

to some extent from the competition of the Memphis and St. Louis gateways we have regarded as well founded. The central and eastern Wisconsin territory here in question is beyond the influence of this competition and the proportional rates to those points have therefore been withdrawn, the defendant lines contending that there is no justifying influence compelling their maintenance.

The complainant millers were under the impression that the proportional rates to Chicago and Milwaukee would enable the millers at those points to get into their territory on a lower rate basis than the Wisconsin millers themselves enjoy. But this is not the case. The situation may best be illustrated by taking a representative point, as Gresham, Nebr., and a representative milling point, as Wausau, Wis. The through charge to Wausau would be based on the local rate from Gresham to Omaha, 14 cents, and the local rate Omaha to Wausau, 15¾ cents. On this rate the grain could be cleaned in transit, milled at Wausau, and the product then shipped out to any point beyond taking the same rate as Wausau without further charge. It may also be shipped beyond to other points on the basis of certain arbitraries over the Green Bay rate. A back haul is not permitted under the through rate, and the markets of these millers are therefore confined largely to points north of their mills. We understand that Chicago is not a competitor of these millers. While the Chicago and Milwaukee millers may receive grain on the 12-cent proportional rate, it may be cleaned and milled only on the basis of the 15¾-cent rate with the privilege of shipping the product to points beyond taking the same rate. Flour milled at Milwaukee therefore is able to reach other Wisconsin points only on the same basis of total charges as is paid by the complaining millers. It therefore follows that if the transit privilege is not abused at Chicago and Milwaukee there is no discrimination against the Wisconsin millers based on the proportional rates to these two points.

There is some evidence that a large miller at Omaha is selling flour in this territory, but if so it is apparent that he is absorbing the increased rate out of his profits, for the same increase was made on flour from the Missouri River as upon grain.

Upon the whole record we have reached the conclusion that the complaint is without real foundation, and must be dismissed.

It will be so ordered.

No. 3192.

JOSEPH E. THROPP

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted December 6, 1911. Decided May 14, 1912.

1. Upon the facts of record rate of $1.45 per gross ton on ore from Buffalo, N. Y., to Mount Dallas and Saxton, Pa., not found to have been unreasonable or unjustly discriminatory. The view expressed that much of complainant's disadvantage appears to be due to the adjustment of import rates from Philadelphia, which rates the complaint failed to attack.
2. The case held open to permit a readjustment of rates or the filing of an amended petition.

William A. Glasgow, jr., for complainant.
George Stuart Patterson for defendants.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner:*

Complainant, a blast-furnace operator at Mount Dallas and Saxton, Pa., attacks the reasonableness of the rate on iron ore to his furnaces from Buffalo, N. Y. Unjust discrimination against Mount Dallas and Saxton and undue preference and advantage in favor of eastern Pennsylvania furnaces, particularly those at Pottstown, Swedeland, and Chester, are also alleged. Mount Dallas is located at the intersection of the Pennsylvania Railroad and the Huntingdon & Broad Top Railroad, but the traffic moves entirely via the Pennsylvania. Saxton is on the Huntingdon & Broad Top Railroad, to which line the Pennsylvania makes delivery at Huntingdon, Pa. Saxton is about 26 miles south of Huntingdon and 20 miles north of Mount Dallas.

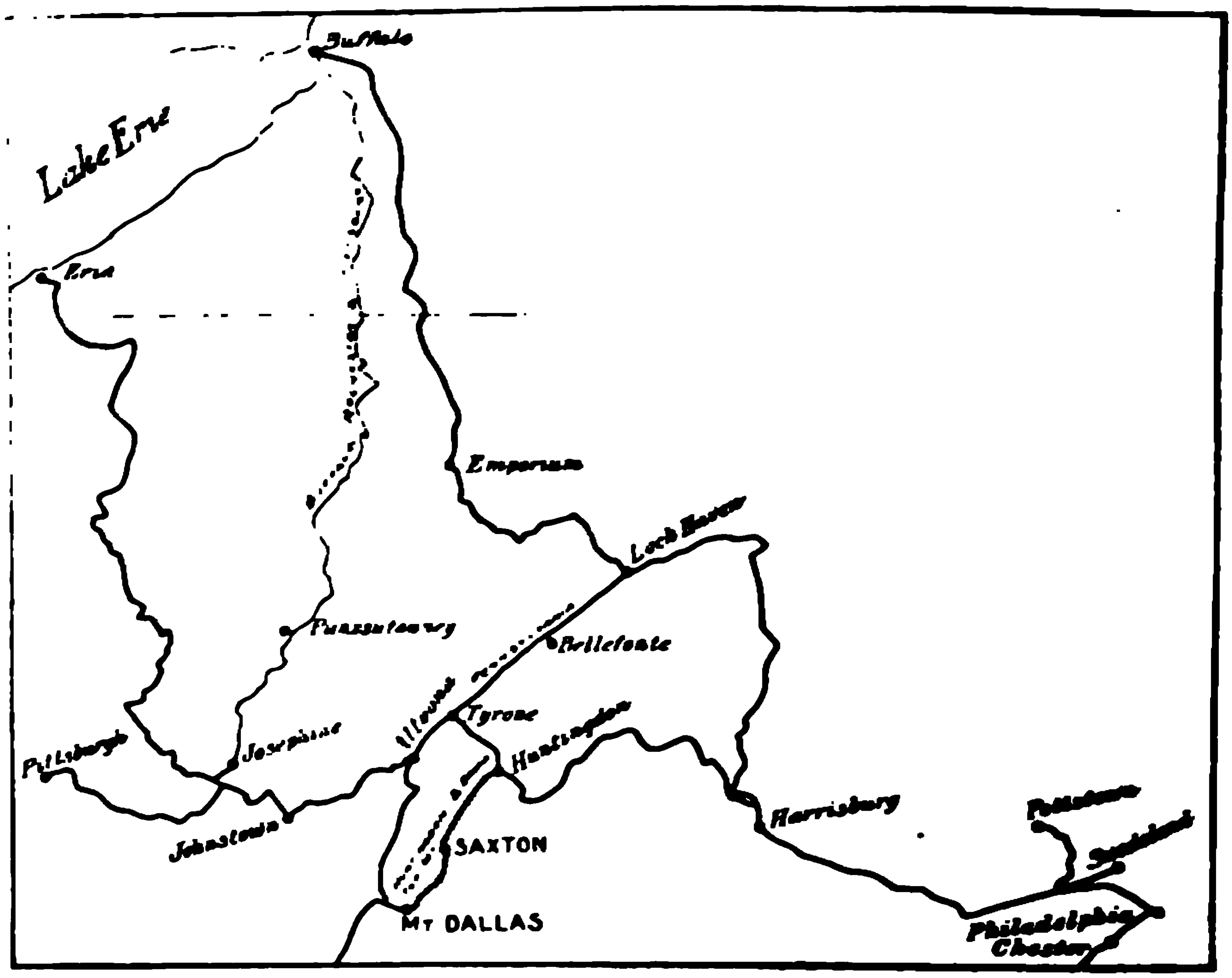
From Buffalo the distances are as follows:

To—	Miles.
Mount Dallas	316
Saxton	296
Pottstown	405
Swedeland	422
Chester	432

To all of these points the rate from Buffalo is $1.45 per gross ton on ore handled direct from vessels to cars, and $1.53 on ore placed

upon the dock and thence reloaded into cars. This 8-cent differential is not attacked, and it will suffice to consider only the $1.45 rate.

The following diagram best illustrates the geographical situation:



Complainant asks us to establish the same per-ton-per-mile rate to Mount Dallas and Saxton as applies under the $1.45 rate to the extreme eastern points. All of these furnaces are in the so-called eastern Pennsylvania group embracing all territory east of Johnstown, except Emporium, 121 miles from Buffalo, and Bellefonte, 220 miles distant, which, because of their proximity to Buffalo, are not included in the aforesaid group and take rates of 75 cents and $1.15, respectively. Pottstown, Swedeland, and Chester are about the farthest distant points in the group, while Harrisburg, 322 miles from Buffalo, is generally regarded as the center. The average distance to all points taking the $1.45 rate appears to be 340 miles. Prior to 1903, the rate to Mount Dallas and Saxton was $1.55; to the extreme eastern furnaces, $1.35. In that year the $1.35 rate was made applicable to all eastern furnaces and so remained until 1907, when the present rate of $1.45 was established. This rate amounts to 4.6 mills per ton per mile to Mount Dallas, 4.9 mills to Saxton, and about 15 mills to Pottstown, Swedeland, and Chester. While complainant a higher per-ton-mile rate than do the furnaces in the extreme

east, this is always so when a group point somewhat under the average distance is compared with the point farthest removed. Our attention was directed to rates of 85 cents from Buffalo to Josephine, Pa., 229 miles, and 60 cents from the same place to Punxsutawney, 182 miles, made by the Buffalo, Rochester & Pittsburgh Railroad, but it was not shown that the operating conditions are sufficiently similar to justify the application of the same per-ton-mile rate to complainant's furnaces.

Considered solely as a group, the area covered by the $1.45 rate is not so extensive as to require condemnation. Moreover, the distance to complainant's plants is only 25 to 35 miles less than the average to all points in the group to which ore actually moves and approximates the distance to Harrisburg, the center of this territory. Any reduction made in the rate to Saxton and Mount Dallas would necessitate a similar reduction to Harrisburg and would result in a disruption of the present adjustment of rates from Buffalo to eastern Pennsylvania.

Complainant's principal disadvantage appears to be due to the fact that Pottstown, Swedeland, and Chester are within 20 to 40 miles of Philadelphia, through which port a considerable quantity of foreign ore is imported. To these furnaces the rate from Philadelphia is from 35 to 40 cents, while to complainant's plants the rate is $1.50, the same as applies to Pittsburgh, 112 miles farther distant. In other words, from Buffalo complainant is grouped with plants over 100 miles farther east, and from Philadelphia with plants over 100 miles farther west. Harrisburg, while the center of the eastern group for traffic from Buffalo, takes a rate of 70 cents from Philadelphia for a haul of 90 miles. A removal of the alleged discrimination by an increase in the rate from Buffalo to the extreme eastern furnaces would merely mean an increase in the amount of foreign ore used by those furnaces and would be of no benefit to complainant, who, under the $1.50 rate, can use no foreign ore. Since the hearing, the rate from Philadelphia to Mount Dallas has been reduced to $1.40. At the argument of the case counsel for complainant stated that complainant would be satisfied if given the Harrisburg rate of 70 cents from Philadelphia.

But the complaint does not attack the import rate from Philadelphia, although it was referred to at the hearing and the argument, and the present record does not justify a finding that the Buffalo rate is either unreasonable or unjustly discriminatory. However, grouped, as he now is, with Pottstown, Swedeland, and Chester on ore from Buffalo, and with Pittsburgh on ore from Philadelphia, complainant is clearly at a disadvantage. To what extent this disadvantage is attributable to the rate from Philadelphia we can not now say; but in all fairness a more equitable adjustment of these rates should

be made by defendants, and if this is not done within 60 days permission to amend its petition will be given complainant upon application, and the cause will then come on for further hearing. The case is held open for such further action as may be necessary under the views herein expressed.

Investigation and Suspension Docket No. 58.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF AN ADVANCE IN THE RATE BY THE DELAWARE & HUDSON COMPANY FOR THE TRANSPORTATION OF FLUID MILK.

Submitted April 25, 1912. Decided May 22, 1912.

Proposed advanced rate from Poultney, Rupert, and West Pawlett, Vt., and Cambridge, Granville, Middle Granville, Salem, and Shushan, N. Y., to Eagle Bridge, N. Y., on fluid milk in carloads destined to Boston, Mass., found to be unreasonable to the extent it exceeds the rate prescribed herein, which permits a slight advance in the present rate.

Whipple, Sears & Ogden and *G. K. Bartlett* for Hood & Sons.

Lewis E. Carr, by *John E. MacLean* and *Lewis E. Carr, jr.*, for Delaware & Hudson Company.

Report of the Commission.

Clements, *Commissioner:*

This case involves the reasonableness of a proposed advance in the rate on fluid milk in carloads, contained in a tariff of the Delaware & Hudson Company, I. C. C. No. 10771, filed with this Commission to become effective September 1, 1911. By orders of the Commission the operation of the tariff was suspended until June 29, 1912.

The controversy relates to shipments of milk over a part of the Delaware & Hudson Company's line extending from Poultney, Vt., to Eagle Bridge, N. Y. The history of the present rate is set forth in the report of the Commission in *Hood & Sons* v. *Delaware & Hudson Co.*, 17 I. C. C., 15, reference to which is hereby made. The testimony in that proceeding has been stipulated into the present record. The Commission there found that for the transportation of milk from

Poultney, Rupert, and West Pawlett, Vt., and Cambridge, Granville, Middle Granville, Salem, and Shushan, N. Y., to Eagle Bridge, N. Y., destined to Boston, Mass., a rate of $16 per car of 250 cans of 40 quarts each, and 6½ cents per can for any excess over 250 cans, was a reasonable carload rate. A less-than-carload rate of 10 cents per can of 40 quarts each was also established.

By the tariff in question the Delaware & Hudson Company, hereinafter referred to as the defendant, seeks to establish a rate of 9 cents per can of 40 quarts each, based on a car minimum of 250 cans, excess at the same rate per can, on Boston shipments of milk from the points mentioned to Eagle Bridge. No change is proposed in the less-than-carload rate.

The distance to Eagle Bridge from Poultney is 45 miles, and from Raceville, the next station south, 41 miles. H. P. Hood & Sons, a corporation hereinafter referred to as the complainant, is the only shipper of milk from this territory to the Boston market. No change is sought in the rate on milk moving over defendant's line in the opposite direction destined to New York City.

The defendant undertakes to justify the advance on two grounds: (1) That the cost of the service has been increased, and (2) that the present rate is unreasonably low when compared with rates from other points on its line to New York City and with rates of other roads for similar services.

(1) As to the alleged increase in cost of the service: Prior to June 18, 1911, a New York milk train left Salem at 8.30 a. m. which carried complainant's milk from that point and from intermediate points south to Eagle Bridge. On its return it picked up complainant's milk north of Salem to Raceville or Poultney, where the car was dropped off. The train then moved on via Castleton and Whitehall to Albany, where the New York milk was turned over to the New York Central for delivery. The car dropped off at Raceville or Poultney was picked up and carried to Eagle Bridge by a New York milk train which ran in the opposite direction. In other words, complainant's milk cars were handled on New York milk trains which ran around the loop via Castleton and Whitehall in both directions.

But the method of handling milk for the New York City market was changed. The defendant secured trackage rights over the Boston & Maine Railroad from Troy, N. Y., to Eagle Bridge, and thereafter one of the New York trains was run direct to Eagle Bridge from Troy. Going north it let off empties and picked up milk for New York City at various points along the line and continued on its way around the loop via Castleton and Whitehall to Albany. The train that formerly ran in the opposite direction was taken off, and that part of the service was discontinued entirely. By reason of this change complainant's milk cars could no longer be carried to Eagle

Bridge on the New York trains, and some other provision had to be made. This was done by running milk cars attached to passenger trains from Eagle Bridge north and from Poultney south, distributing empty cans and bringing back milk. The same crew and engine were used to conduct the combined passenger and milk train service. This is the service the defendant claims is more expensive than that formerly rendered in handling complainant's milk. It appears, however, that the changed method of operation was not requested by complainant but was inaugurated by defendant of its own motion and for its own convenience, and resulted in very considerable saving of expense in handling shipments destined to New York.

(2) The contention that the present rate is too low: From Poultney to Boston the distance is 213 miles. We are dealing with shipments destined to Boston and the rate is not to be considered merely as a local rate. The distance from Eagle Bridge to New York via Castleton, Whitehall, and Albany is 290 miles. The carload rate to New York is 28.8 cents per can of 40 quarts. For the haul from Eagle Bridge to Albany, a distance of about 142 miles, the defendant gets 50 per cent of the through rate to New York, or 14.4 cents per can of 40 quarts, which is equivalent to 3.6 mills per quart. For the 45 miles from Eagle Bridge to Poultney it is equivalent to 1.13 mills per quart. Under the proposed advance the rate on complainant's milk would be equivalent to 2.25 mills per quart from Poultney and intermediate points to Eagle Bridge, or nearly twice the rate for the same distance in the opposite direction on milk destined to New York. Furthermore, on New York milk terminal charges of 2 cents per 100 pounds are to be deducted, which makes the amount actually received for the 45 miles from Eagle Bridge to Poultney about 1.07 mills instead of 1.13 mills per quart. It thus appears that for hauling New York milk the defendant receives for practically the same service less than half as much as it would receive under the proposed increased rate on complainant's milk.

The amount received on New York milk from Eagle Bridge to Albany appears to be a proportional part of a through rate. For this reason it is insisted that the conditions do not present a proper basis for comparison. But it is to be remembered that the milk handled for complainant is destined to Boston, and that the rate for the service from Poultney to Eagle Bridge is a part of the through charge.

The defendant refers to tariffs of numerous other railroads showing rates on milk in distant parts of the country. It is to be noted that the rates given are nearly all less-than-carload or per-can rates. Furthermore, it is not shown that the transportation conditions are

similar to those here involved. Under the circumstances we can not accept the suggested comparisons as of material consequence.

Rates in nearby territory furnish a more reliable basis of comparison. From the points in question to Eagle Bridge, with a maximum distance of 45 miles and a much less average distance, the present rate of $16 per car of 250 cans of 40 quarts is the equivalent of 6.4 cents per can, or 1.6 mills per quart. On the basis of the same number of cans per car and of quarts per can, the rate on the Boston & Maine Railroad for distances ranging from 1 to 40 miles is $15.33 per car, the equivalent of 6.1 cents per can, or 1.5 mills per quart. For a distance of 41 miles on the same line the rate is $15.73 per car, the equivalent of 6.3 cents per can, or 1.6 mills per quart. Between Providence, R. I., and Boston, Mass., a distance of 45 miles over the New York, New Haven & Hartford Railroad, the rate is $17.24 per car, the equivalent of 6.9 cents per can, or 1.7 mills per quart. Other instances of similar character might be given. The comparisons show that rates on milk for substantially similar distances in adjacent territory are on approximately the same basis as the present rate from Poultney and intermediate points to Eagle Bridge. The rate proposed in the tariff in question is the equivalent of $22.50 per car, or 2.25 mills per quart. If permitted, this would be an advance of about 40 per cent over the present rate.

The difference between the carload rate and the less-than-carload rate, as at present in force, is invoked to support defendant's contention that the carload rate is too low and that the proposed rate is reasonable. But the facts do not warrant the fixing of a carload rate solely on the basis of any given percentage of the less-than-carload rate. No issue is raised respecting the reasonableness or unreasonableness of the less-than-carload rate, and there is no evidence of record that would justify its acceptance as a standard whereby to judge the reasonableness of the proposed advance in the carload rate. In matters of this character each case must be considered and determined on its own facts.

Upon consideration of all the pertinent facts, circumstances, and conditions appearing, it is the finding and conclusion of the Commission that the proposed increased rate is unreasonable and unjust, and that while the proposed advance is not justified in its entirety there is probable justification for an advance in the present rate to $17.25 per car of 250 cans of 40 quarts each, and 7 cents per can for any excess over 250 cans. The defendant will therefore be required to cancel its tariff I. C. C. No. 10771, and to establish and, for a period of not less than two years, maintain a rate not in excess of that specified. An order will be entered in accordance with these findings and conclusions.

No. [illegible]

TEXAS SEED & FLORAL COMPANY

v.

NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY ET AL.

Submitted [illegible] 1911. Decided May 13, 1912.

The western classification provides carload ratings on incubators and brooders at second class, crated or boxed, minimum weight 12,000 pounds per carload; and, when "knocked down flat, boxed," fifth-class rating, subject to a minimum of 30,000 pounds. *Held*, That it is clearly shown that compliance with the conditions upon which the lower rating is based is impracticable, and that the carload rating upon straight or mixed shipments of brooders and incubators, crated or boxed, ought not to exceed fourth class, subject to a minimum weight of 24,000 pounds for a 36-foot car. Reparation awarded.

O. M. Rogers for complainant.

D. L. Meyers for Gulf, Colorado & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the purchase and sale of seed, plants, and poultry supplies at Dallas, Tex. By petition, filed June 24, 1911, it alleges that it was charged by defendants unreasonable and unduly discriminatory rates for the transportation of certain carload shipments of incubators and brooders from Buffalo, N. Y., to Dallas. The minimum weight provided for in the classification is also alleged to be unreasonable. The claim was first presented to the Commission December 13, 1910. Reparation is sought.

Between February 17, 1910, and March 29, 1911, complainant received at Dallas from Buffalo three mixed carload shipments of incubators and brooders as follows: On February 17, 1910, over the lines of the Michigan Central Railroad, Chicago Great Western Railroad, Kansas City Southern Railway, and Texas Pacific Railway, one carload shipment weighing 23,901 pounds; on March 6, 1911, over the same route, one carload shipment, weighing 30,300 pounds; and on March 29, 1911, over the lines of the New York, Chicago & St. Louis Railroad, Chicago & Great Western Railroad, Kansas City Southern Railway, and Texas & Pacific Railway, one carload shipment weighing 32,600 pounds. On these shipments freight charges were originally collected on the basis of the second-class rate of $1.74 per 100

pounds, in the several sums of $415.86, $527.22, and $567.24, respectively. Since filing the petition, however, complainant has notified the Commission that it has received a refund of $118.86 on the shipment of February 17, 1910, weighing 23,901 pounds. The final adjustment of charges on this shipment were, therefore, on the basis of the fifth-class rate of 99 cents per 100 pounds at a minimum weight of 30,000 pounds.

The complaint sets forth one other mixed carload shipment of incubators and brooders and one less-than-carload shipment of incubators. It appears that on these the fifth-class rate was collected, but later supplementary bills were rendered on the basis of the second-class rate for the carload and first-class rate for the less-than-carload shipment. Complainant, however, is unable to furnish evidence of the payment of the additional charges. No finding, therefore, can be made as to these shipments.

All of the shipments were subject to the western classification, which at the time of shipment provided the following ratings:

Incubators and brooders:	L. C. L.	C. L.
Boxed or crated, min. c. l. wt. 12,000 lbs. (subject to rule 6-B)	1	2
In the white, min. wt. 12,000 lbs. (subject to rule 6-B)		2
K. d. flat, boxed, min. c. l. wt. 30,000 lbs.	2	5

The provisions of the classification as quoted above have remained unchanged through a number of years and are the same to-day. The class rates in cents per 100 pounds from Buffalo to Dallas were at time of shipment as follows: First class, $1.97; second class, $1.74; fourth class, $1.25; fifth class, 99 cents.

The case involves the interpretation of the terms of the classification; consideration of the physical construction and characteristics of the articles and the practicability of preparing and loading them for shipment in accordance with the requirements which the classification prescribes for fifth-class rating. The incubators shipped were crated, not boxed. They are made in four sizes, ranging from 9 to 40 cubic feet in dimensions, weighing from 95 to 265 pounds, and valued at from $10.35 to $24.05. The incubator is a boxlike affair, inclosed in which are various coils for conducting hot air; these coils are securely fixed to and are a part of the body of the machine, which rests on legs. On the outside is a lamp attached to the end; on the top a regulating apparatus. When shipped, the outside fixtures are removed and placed within the body of the incubator proper; the legs are removed and inclosed within the crate containing the body. This, it is shown by the testimony, is the extreme limit to which the incubators can be knocked down. The defendants assert that when so shipped they do not come within the provisions entitling them to fifth-class rating. The complainant contends that this is a substantial compliance with the classification and that if so completely taken apart that they could

be packed "flat," as required by the precise terms of the classification, they would no longer be incubators, but merely incubator stock. Furthermore, they contend that it would ordinarily be impossible for the purchaser to set up or reconstruct the incubator so shipped.

The brooder is a collapsible box, also made in four different sizes, varying from 7 to 13¾ cubic feet in dimensions, weighing from 100 to 225 pounds, and ranging in value from $9 to $12.50. Unlike the incubator, the heating parts in the brooder can be entirely taken out, so that the brooders may be packed flat, thus making a very compact package.

The testimony shows that in a standard 36-foot car of 2,160 cubical feet capacity incubators could not be loaded to more than 17,154 pounds, while in such a car approximately 24,188 pounds of brooders could be loaded, and that the same car containing a mixed load of brooders and incubators would carry about 21,000 pounds. The complainant and defendants agree, however, that 24,000 pounds would be a reasonable minimum for a combination load in a standard 36-foot box car.

The evidence clearly shows, and the only representative of the defendants appearing at the hearing admits, the impracticability of compliance with the classification requirements for fifth-class rating. A representative of the firm manufacturing the incubators and brooders testified that the question of lower rating had been taken up with the western classification committee some three years prior to the hearing, that interviews had been had and correspondence conducted with the committee, but without any satisfactory results. Counsel for defendants admitted that consideration had been given to the advisability of establishing a fourth-class rate, subject to a 24,000-pound minimum, but no definite action had been taken. Counsel further stated that their investigation developed that the classification was intended to provide a fifth-class rating with a 30,000-pound minimum on brooders knocked down flat.

As evidence of the comparative unreasonableness of the classification rating, the complainant shows that exceptions to the classification applicable into the territory in question make furniture, including desks, sectional bookcases, etc., in carloads, class A, minimum weight 12,000 to 14,000 pounds; hand churns, fourth class, minimum 15,000 pounds; sewing machines, fourth class, 16,000 pounds; washing machines, hand, third class, 16,000 pounds. Many of the articles cited are of considerably higher value, yet load no more compactly or economically than incubators.

Upon consideration of all the facts of record we are of the opinion and so find that the second-class rating applied to these shipments was unjust and unreasonable, and that incubators and brooders, crated or boxed, in combined car lots, with detachable parts removed,

ought not to take a rating higher than fourth class upon a minimum weight of 24,000 pounds in a standard 36-foot car, and the defendants herein will be required to establish for the future such a rating on incubators and brooders in straight or mixed carloads.

We further find that complainant made the three shipments described in the foregoing statement of facts; that complainant paid charges thereon in the several sums stated at the rate and minimum weight herein found unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate and minimum weight herein found reasonable; and that it is, therefore, entitled to an award of reparation in the sum of $305.21, with interest from April 3, 1911. An order will be entered in accordance with the conclusions herein announced.

No. 4260.
HUNTINGDON LUMBER COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted December 14, 1911. Decided May 7, 1912.

Rate of 24 cents per 100 pounds for the transportation of wheat in carloads from Clinton, Ky., to Huntingdon, Tenn., found to have been unreasonable to the extent that it exceeded 19 cents. Reparation awarded and reasonable rate prescribed for the future.

G. M. Stephen for complainant.
R. Walton Moore for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the purchase and sale of grain and lumber, with principal place of business at Huntingdon, Tenn. By petition, filed July 19, 1911, it alleges that a rate of 24 cents per 100 pounds charged by defendants for the transportation of two carloads of wheat from Clinton, Ky., to Huntingdon, Tenn.,

[illegible] 1908, was unjust and unreasonable [illegible] a rate of 14 cents per [illegible] pounds [illegible] from [illegible], Ill., to Huntingdon. [illegible]

[illegible] Illinois Central Railroad, 36 miles [illegible] miles from Huntingdon. The [illegible] Illinois [illegible] Martin, Tenn., thence [illegible] Nashville, Chattanooga & St. Louis Railway, and, in the [illegible] were charged a combination rate [illegible] 13 cents to Martin [illegible] Martin to Huntingdon, which was [illegible] The [illegible] in their answer and [illegible] through rate was 21 [illegible] $[illegible] were collected, based [illegible] aggregate weight of 106,900 [illegible]

[illegible] reasonableness of the [illegible] section of the act. [illegible] passes [illegible] Clinton, and complainant [illegible] rate of 16 cents as the standard [illegible] rate is to be measured. [illegible] it submits for comparative purposes [illegible] are the rates from Clinton, [illegible] Ky., and Nashville, Tenn.:

From—	To—	Miles.	Rate.
Clinton, Ky.	Trenton, Tenn.	60	14
Do.	McKenzie, Tenn.	40	12
Paducah, Ky.	Huntingdon, Tenn.	85	14
Hickman, Ky.	Martin, Tenn.	93	17
Nashville, Tenn.	[illegible], Ky.	167	18

Complainant is in error, however, as to the rates from Clinton; the tariffs show that the rates from the latter point are, to Trenton 24 cents and to McKenzie 22 cents. The destination points cited are all local points, except McKenzie, Tenn., which is on the main line of the Nashville, Chattanooga & St. Louis road, just west of Huntingdon, and is also reached by the Louisville & Nashville road.

In rebuttal defendants show the influence of competitive conditions at Cairo, Hickman, Paducah, and other Ohio and Mississippi River points, and aver that the rates from these points are applicable largely, if not solely, on grain originating beyond, while the Clinton grain is produced locally. The situation at the Ohio and Mississippi River points is well understood. To Georgia, Alabama, and Florida [illegible]ts the Cairo rates on wheat are applicable from Clinton; while to

east Tennessee, including such points as Knoxville, Lenoir, and stations on the Knoxville division of the Southern Railway, and to Carolina territory, the rates from Clinton are 3 cents higher than from Cairo. West Tennessee, described as including the territory around Union City, Dyer, Clinton, and other points, is said by the defendant to be a wheat-producing section, while middle Tennessee produces little or no wheat. Except for the general principle that rates should be relatively lower for longer distances, the record discloses no reason for applying the full combination of local rates from Clinton to Huntingdon, while according to east Tennessee and to the Carolinas an arbitrary of 3 cents over Cairo.

The Illinois Central's Kentucky-Tennessee and Mississippi-Tennessee mileage rates for 61 miles, the length of the haul from Clinton to Huntingdon, are shown to be 15 and 14 cents, respectively, but these are one-line hauls, while the haul from Clinton to Huntingdon is a two-line haul.

We are not convinced upon the facts of record that complainant's prayer for a rate of 16 cents should be granted, but the record presents no justification for maintaining a rate from Clinton to Huntingdon higher by more than 3 cents than the rate from Cairo.

Our conclusion is that the rate complained of was unreasonable and unduly prejudicial to the extent that it exceeded 19 cents. We further find that complainant made the shipments as recited in the foregoing statement of facts and paid charges thereon at the rate found herein to have been unreasonable and unduly prejudicial; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate above found reasonable; and that it is therefore entitled to an award of reparation in the sum of $54.45, with interest thereon from July 22, 1909. The defendants will be required to establish and maintain for a period of two years a rate for the transportation of wheat in carloads from Clinton to Huntingdon which shall not exceed by more than 3 cents per 100 pounds the rate contemporaneously in force from Cairo, Ill., to Huntingdon.

It must be understood that our findings in this case are without prejudice to the result of any investigation of these rates which may be reached in pursuance of the provisions of the amended fourth section. An order will be entered in accordance with the findings herein announced.

No. 4196.

PORTSMOUTH STEEL COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted February 1, 1912. Decided May 13, 1912.

Rate of $2.53 per ton on limestone in carloads from Martinsburg, W. Va., to Portsmouth, Ohio, not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

Miller, Miller & Searle for complainant.
William C. Coleman for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the manufacture of steel and iron products at Portsmouth, Ohio. In its petition, filed June 23, 1911, it alleges that it was charged an unreasonable and unjustly discriminatory rate for the transportation of 41 carloads of limestone over the lines of the defendants from Martinsburg, W. Va., to Portsmouth. Reparation is asked.

The shipments in controversy moved between November 3 and December 22, 1910. When the complainant decided to make shipments of limestone from Martinsburg it learned that the rate was $2.53 per ton of 2,000 pounds, and asked the defendants, in view of the large number of shipments that were in contemplation, that the rate be reduced to $1.75 per ton. On November 22, 1910, the defendants filed a tariff, naming a rate of $1.85 per ton of 2,240 pounds, which became effective on December 23, 1910. On November 25, 1910, the complainant requested the defendants to join in an application to the Commission to authorize reparation for the difference between the rates of $2.53 and $1.85 on all shipments moving prior to the effective date of the lower rate. The defendants refused to join in such an application, asserting that the rate of $2.53 was not unreasonable, and the complaint herein was thereupon filed.

The charges collected on the 41 shipments amount to $4,788.55, and the complainant asks reparation for the difference between that amount and the amount which would have accrued at a rate of $1.85 per gross ton, or $1,656.62.

The complaint alleges that the rate of $2.53 per ton was unreason-
as compared with the defendant Baltimore & Ohio Railroad
y's rates of 65 cents per gross ton from Martinsburg to

Munhall, Pa., a point near Pittsburgh, Pa., a distance of 221 miles, and $1.40 per gross ton to Cleveland, Ohio, 389 miles. Another contention made at the hearing was that the cost of the stone at Martinsburg was only 65 cents per ton, and that there was a great disproportion between the original value of the commodity and the cost of the transportation.

The defendants showed that the rates to Munhall, Pittsburgh, and Cleveland are on a competitive basis and are made to meet the rates of the Pennsylvania Railroad on limestone from the Tyrone district on that line 130 miles east of Pittsburgh, and that the original rate of $2.53 to Portsmouth was published to meet a rate of like amount maintained by the Pennsylvania on stone from Tyrone. Complainant had previously obtained its supply of limestone from nearby Ohio points

The defendants deny that the original rate was unreasonable considering the haul over the Alleghenies to Portsmouth, and explain that the reduction was made to induce a greater movement of traffic. Testimony was also adduced for defendants to show that the cars that are used to carry the limestone to Portsmouth must nearly all be returned empty 227 miles to Grafton, W. Va., the point of diversion to the Fairmont coal field, their natural loading point, before an eastbound load can be found, whereas there is generally a return load for every car that goes into the Pittsburgh district. A witness for complainant testified that 90 per cent of the cars that arrive at Portsmouth loaded with limestone from Martinsburg are sent out from complainant's plant loaded. The equipment used at Martinsburg to load limestone is usually that moving empty from tidewater to the Maryland and West Virginia coal fields, and ordinarily would continue empty to Grafton, 180 miles farther, if it were not for this westbound limestone traffic, so that this revenue-producing business practically offsets such empty return movement of the cars as there may be from Portsmouth to Grafton.

The rate of $2.53 produced a revenue of 6.2 mills per ton per mile of the 407-mile haul to Portsmouth; that of $1.85 produces 4 mills per ton of 2,240 pounds and 4.5 mills per net ton. The element of competition with limestone from the Pennsylvania line is said to have been potent in fixing the Munhall and Pittsburgh rates.

The record clearly indicates that the reduction in the rate was voluntarily made by defendants for the sole purpose of stimulating movement. Complainant now has the benefit of the lower rate, and we would not be justified in awarding reparation on shipments that moved prior to the date when the lower rate became effective in the absence of a showing that the rate charged was excessive or unjustly discriminatory, and upon the record we can not find that such showing has been made. An order will therefore be entered dismissing the complaint.

No. 4304.

GALVESTON COMMERCIAL ASSOCIATION ET AL.

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY ET AL.

Submitted January 3, 1912. Decided May 7, 1912.

Rate of 80 cents per 100 pounds on bottles of wine, in less than carloads, shipped in cases from Galveston, Tex., to New Orleans, La., found unreasonable to the extent that it exceeds the rate contemporaneously maintained in the opposite direction. Reparation awarded.

H. H. Haines for complainants.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, Chas. F. Schmidt & Peters, is a corporation engaged in selling liquors and having its principal place of business at New York, N. Y. By petition, filed August 14, 1911, this complainant alleges that on June 9, 1911, it shipped 40 cases of liquor in glass, aggregate weight 2,890 pounds, from Galveston, Tex., to New Orleans, La., for the transportation of which the defendants collected charges based on a rate of 80 cents per 100 pounds, which is alleged to have been unreasonable to the extent that it exceeded 46 cents per 100 pounds. Reparation is asked. Complainant, Galveston Commercial Association, a corporation having for its object the improvement of the commercial conditions of the city and port of Galveston, joins in the petition, alleging that the rate on liquors from Galveston to New Orleans is unreasonable and discriminates against Galveston and its merchants engaged in the wholesale liquor business and prays the establishment for the future of a rate not in excess of 46 cents.

At the time of this movement there was no commodity rate on liquors from Galveston to New Orleans and defendants assessed charges on the shipment in the sum of $25.01, based on the first-class rate of 80 cents, that being the rate applicable.

New Orleans and Galveston both import liquors of the character involved in this complaint, and the defendants have established a special commodity rate of 46 cents thereon from New Orleans to

Galveston. Complainant protested against the higher rate from Galveston, and defendants, the Galveston, Harrisburg & San Antonio Railway Company and Texas & New Orleans Railroad Company, offered to publish a rate of 46 cents. In their answer they signify their willingness to put this rate in effect could they be assured that there would be any appreciable movement under such rate. No effort was made by the defendants to justify the great disparity between the rates in the opposite directions

Considering the facts and circumstances disclosed by the record, the Commission is of opinion and finds that the rate of 80 cents per 100 pounds on bottles of liquors in less than carloads, in cases, charged complainants on the shipments herein from Galveston to New Orleans is unreasonable to the extent that it exceeds 46 cents per 100 pounds contemporaneously maintained in the opposite direction.

We further find that complainant, Chas. F. Schmidt & Peters, made the shipment in accordance with the above statement of facts and paid charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate above found reasonable; and that it is, therefore, entitled to an award of reparation in the sum of $9.83, with interest from June 9, 1911. There is an overcharge of $1.89 which will be included in the order for reparation.

An order will be entered in accordance with these findings.

[illegible] STEEL COMPANY

[illegible] SOUTHERN RAILWAY [illegible]

[illegible]

[illegible] Burlington & Quincy Railroad Company.

[illegible] principal place of busi- [illegible] manufacture and sale [illegible] filed August [illegible] rate [illegible] plank from Salt Spur [illegible]

[illegible] plank which [illegible] the St. Louis, Iron [illegible] Rock, Nebr. [illegible] Burlington & Quincy [illegible] by the complain- [illegible] were [illegible] Kansas [illegible] Moines, and amounted [illegible] Kansas City-Des [illegible] Chicago, Rock [illegible] Milwaukee & St. Paul [illegible] producing territory. [illegible] No complaint is made [illegible] complainant asks for rep- [illegible] the sum of [illegible] the difference between $177.29,

the charges collected on the 29½-cent rate, and $159.26, which would have been the charges at a through rate of 26½ cents, made up of 18 cents to Kansas City and 8½ cents beyond.

It was stated by the complainant that the Kansas City-Des Moines rates are adjusted on basis of the St. Louis-Des Moines rates; and that, as St. Louis is approximately 100 miles more distant, the Kansas City rate should not be higher than the St. Louis rate. All the St. Louis-Des Moines carriers, including the Burlington, at the time of the movement in question, maintained a local rate on lumber of 9½ cents from St. Louis. The Burlington representative admitted at the hearing that the local rate from Kansas City should not exceed the local rate from St. Louis.

Upon the record we find that the rate on lumber from Kansas City to Des Moines is unreasonable to the extent that it exceeds the rate contemporaneously in effect from St. Louis to Des Moines, and the defendant will be required to establish and maintain a rate upon that basis for the future. We further find that complainant made the shipment in accordance with the foregoing statement of facts and paid charges thereon at the rate found herein to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount that it would have paid at the rate herein found reasonable; and that it is therefore entitled to an award of reparation in the sum of $12.02, with interest from July 6, 1911. The excessive rate having been assessed by the Burlington for its service, the award of reparation will issue against that company alone.

An order will be entered in accordance with the findings herein announced.

No. 3745.

RENO WHOLESALE LIQUOR STORE, INCORPORATED,

v.

SOUTHERN PACIFIC COMPANY.

Submitted February 5, 1912. Decided May 7, 1912.

Shipments of wine and brandy moving in the same car but under separate bills of lading can not be treated as mixed-carload shipments under the western classification.

William P. Seeds for complainant.

C. W. Durbrow and *H. A. Scandrett* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the wholesale liquor business at Reno, Nev. In its petition, filed December 27, 1910, it is alleged that it was charged by defendant unreasonable rates for the transportation of wine and brandy in wood, shipped at various times between April 24, 1909, and January 15, 1910, from San Francisco, Cal., to Reno. Reparation is asked.

There are four shipments involved in the complaint, as follows: April 24, 1909, 31,610 pounds of wine and 2,150 pounds of brandy; October 7, 1909, 40,172 pounds of wine and 2,401 pounds of brandy; November 22, 1909, 42,818 pounds of wine and 2,037 pounds of brandy; and January 15, 1910, 40,012 pounds of wine and 2,088 pounds of brandy. Upon these shipments charges were paid by complainant in the sum of $777.62, based on rates of 43 cents per 100 pounds on the wine and $1.30 per 100 pounds on the brandy.

Defendant's exceptions to western classification, effective during the time of the shipments, provided that wine and brandy in mixed carloads should be rated as follows: Wine, in wood, class B, or 43 cents per 100 pounds; brandy, in wood, 116 per cent of class B, or 49.9 cents per 100 pounds. On less-than-carload shipments of brandy the western classification provided for second class rate, or $1.30 per 100 pounds. The exceptions provided that wine and brandy in mixed carloads would each take its carload rate on actual weight, total weight not to be less than 30,000 pounds. Up to November 20, 1909, and therefore during the times of the first two shipments, there was

also in force a commodity rate on wine in mixed carloads with other liquors of 75 cents per 100 pounds. On the date mentioned the commodity tariff was superseded by another tariff which provided for mixed shipments of wine and brandy, in wood, at the carload rate applicable on each. A rule of western classification in force at the time read as follows:

> Provision for carload ratings shown in the classification will apply only on shipments received * * * under one bill of lading and delivered under one expense bill to one consignee.

The shipments in question moved under separate bills of lading and were delivered under separate expense bills—that is to say, separate bills were signed and received by the shipper for the wine and brandy. It is complainant's contention that the Southern Pacific agent at point of origin suggested taking out two bills for the reason given by him, as alleged, that lower rates would result. There is no evidence in the record respecting the reasonableness of the rates. Complainant appears to rely wholly upon the representations made to the shipper by the Southern Pacific agent.

In *Poor* v. *C., B. & Q. Ry. Co.*, 12 I. C. C., 418, the Commission held:

> While shippers largely rely upon the rates quoted by freight agents and billing clerks, the law charges them with knowledge of the lawful rates. And they will not be heard, before this Commission, to claim the benefit of a lower than the lawful rate on the ground that some railroad clerk has made a mistake in quoting a lower rate for a particular shipment. To permit shippers to impute negligence to carriers in quoting rates and on that ground to enjoy the rate quoted instead of paying the lawfully published rate would open a way for the payments of rebates and might, in practical results, work a repeal of the law.

The rates charged were strictly in accordance with tariffs of the carriers transporting the traffic, and the higher rates of which complaint is made were caused by the shipper's action in taking out two bills of lading instead of one.

We are unable under the circumstances to find that the rates charged on the shipments in question were unreasonable, or that complainant has been damaged. The complaint will therefore be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 75.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATON OF SOFT COAL FROM ILLINOIS MINES TO STATIONS ON THE ST. LOUIS & HANNIBAL RAILWAY.

Submitted April 11, 1912. Decided, May 7, 1912.

Through routes and joint through rates established for the transportation over defendants' lines of soft coal in carloads from certain points in Illinois to destinations in Missouri.

Walter E. McCornack for Shoal Creek Coal Company.

J. W. Graham for Toledo, St. Louis & Western Railroad Company and Chicago & Alton Railroad Company.

H. M. Modisett for St. Louis & Hannibal Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

By withdrawing its concurrence the St. Louis & Hannibal Railway Company put the Toledo, St. Louis & Western Railroad Company in such a position that it was compelled, by supplement filed here on December 30, 1911, to become effective on February 2, 1912, to cancel the joint through rates which it had theretofore published on coal from certain points on its line in the state of Illinois, including more particularly the mines at Panama, to Hannibal and other destinations, in the state of Missouri, on the line of the St. Louis & Hannibal Railway. Formerly the joint through rate from Panama to Hannibal, taking the latter as a typical point of destination, was 75 cents a ton. Under the tariff of joint rates, which it is now proposed to cancel, the rate between those points is 82 cents a ton. If this rate is withdrawn there will be available to shippers only the combination of local rates under which it is clear the traffic could not move. This result apparently was contemplated by the St. Louis & Hannibal in withdrawing its concurrence. At any rate the cancellation of the joint through rates will close that route and will require Hannibal and the other points of consumption in the territory in question to look elsewhere for their coal supply.

With this understanding of the situation the Commission, by an order entered on January 25, 1912, postponed the operation of the supplement filed by the Clover Leaf to cancel its tariff of joint rates,

and the matter was set for hearing. As the withdrawal of the through rates, leaving in operation the lowest combination of local rates, would increase the charges on coal moving over that route, the defendants were under the burden of justifying their course and of showing that the resulting charges would be just and reasonable. But the record made at the hearing does not meet this requirement. In fact no effort was made to show that the combination of locals would be a reasonable charge on this traffic, nor was any substantial reason given for the cancellation of the joint through rates. We therefore find that rates in excess of those now in effect would be unjust and unreasonable. To give effect to this conclusion we shall require the defendants to maintain the present through routes and joint rates between the points in question; and it is expected that the St. Louis & Hannibal will file a new concurrence in place of the one withdrawn.

Such an order will accordingly be entered.

No. 4038.

ASHGROVE LIME & PORTLAND CEMENT COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

No. 3904.

WESTERN STATES PORTLAND CEMENT COMPANY ET AL.

v.

MISSOURI PACIFIC RAILWAY COMPANY ET AL.

No. 4485.

ASHGROVE LIME & PORTLAND CEMENT COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted April 4, 1912. Decided May 7, 1912.

Defendant carriers group the so-called "gas belt" south to Dewey, Okla., on northbound traffic in cement and north to Kansas City on shipments to Texas.

Certain cement mills at Iola, Kans., and immediate vicinity complain that their rates on cement to Kansas City and to various points in the states of Missouri, Iowa, Nebraska, Colorado, South Dakota, Montana, Oklahoma, and Texas are unreasonable and unjustly discriminatory; *Held*, That while upon a strict per-ton-mile basis, computed from these particular mills, certain of these rates may seem rather high, considering the record as a whole, the complaints should be dismissed except as to Oklahoma, where certain reductions are made to place Oklahoma on a substantial parity with other cement rates in this general territory allowed to stand.

J. D. Riddell and *E. E. Barkworth* for complainants in Nos. 3904 and 4038.

J. D. Riddell for complainants in No. 4485.

A. H. Craney, M. J. Higgins, E. R. Stapleton, W. H. Hart, and *Benedict & Phelps* for certain interveners.

T. J. Norton and *A. A. Hurd* for Atchison, Topeka & Santa Fe Railway Company.

H. A. Scandrett for Union Pacific Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; Houston East & West Texas Railway Company; and Houston & Texas Central Railroad Company.

Henry G. Herbel for Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; Texas & Pacific Railway Company; and International & Great Northern Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company and Northern Pacific Railway Company.

C. C. Wright for Chicago & North Western Railway Company.

Fred H. Wood for St. Louis & San Francisco Railroad Company.

W. F. Dickinson and *W. T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

R. V. Fletcher for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner:*

These complaints involve the same general subject matter, and will be disposed of in one report.

The complaints in Nos. 3904 and 4038 attack as unreasonable and unjustly discriminatory defendants' rate of 7½ cents per 100 pounds on cement from certain mills in the so-called "Kansas gas belt" to Kansas City, and the petition in No. 4485 challenges the reasonableness of numerous rates on the same commodity from the same mills to various destinations in the states of Missouri, Iowa, Nebraska, South Dakota, Montana, Colorado, Oklahoma, and Texas. The complainant companies operate cement mills at Independence, Iola, Chanute, Mildred, Humboldt, and Gas, Kans. All these mills are within a radius of

19 miles of Iola and are distant an average of 109 miles southwest from Kansas City, Mo. The Missouri, Kansas & Texas, Missouri Pacific, and Atchison, Topeka & Santa Fe railways originate the traffic.

On traffic to Kansas City and beyond complainants' mills are grouped by the carriers with Dewey, in the extreme northern part of Oklahoma, and on traffic to Texas they take the same rate as Kansas City. Dewey, however, has a differential of 2½ cents under complainants' mills to Texas, due, defendants state, to competition from Ada, in southern Oklahoma. Although grouped with these mills northbound, Dewey is not a party complainant. Dewey is approximately 100 miles south of the mills complainant in these proceedings.

Petitions of intervention have been filed in No. 4485 by operators of cement mills at Independence, Kans. (also grouped by the carriers with these mills): Ada and Dewey, Okla.; Portland, Minnequa, and Concrete, Colo.; Ogden and Devils Lake, Utah; Trident, Mont.; El Paso, Tex.; Yocemento and Bonner Springs, Kans.; La Salle, Ill.; and St. Louis, Mo.; all protesting against any disturbance in the present relation of rates.

To Kansas City complaint seeks a reduction from 7½ to 4 cents per 100 pounds and reparation on past shipments. Following is the recent history of the Kansas City adjustment:

	Cents.
Prior to July 5, 1904	7.5
July 5, 1904	5
September 3, 1904	4
September 20, 1904	5
January 1, 1905	7.5
September 25, 1909	5
January 14, 1910	7.5

The last cancellation of the 5-cent rate appears to have been due to the Santa Fe's action in extending its application north to St. Joseph, Mo. As Dewey, Okla., is blanketed under this rate, it therefore applies from a minimum distance from Mildred, Kans., the northern edge of the gas belt, to Kansas City, of 87 miles, to a maximum of 255 miles from Dewey to St. Joseph. The rate from Sugar Creek, Mo. (11 miles from Kansas City), is 1½ cents to points on the originating line, but to a large number of Kansas City deliveries on other lines the rate averages 2¾ cents. The Kansas City rate of 7½ cents absorbs switching and terminal charges at that point.

To 15 of the Missouri stations in issue the proposed rates are 2½ cents higher than from Sugar Creek, and involve reductions ranging from ½ to 4 cents. Complainants refer in this connection to the fact that the rate of 4 cents from Sugar Creek to St. Joseph is a differential of 2½ cents over the rate from Sugar Creek to Kansas City.

To the remaining 15 Missouri stations, petitioners seek the same rate as applies from St. Louis, or a uniform reduction in rate from 12½ to 10 cents. The average distance from St. Louis is alleged by complainants to be 52 miles in excess of their average mileage. The St. Louis rate applies also from Hannibal, Mo., approximately 100 miles nearer these distributing points than is St. Louis, but complainants' prayer is based wholly upon the St. Louis rates and mileage. To many of these stations the Chicago, Burlington & Quincy affords a one-line haul from St. Louis, whereas the haul is invariably over two or more lines from petitioners' mills.

In Iowa complainants also claim right to the St. Louis basis upon the theory that inasmuch as St. Louis is accorded the gas-belt rates in Nebraska, at greater mileage, the carriers should reciprocate in Iowa, where the complainants' average distance is said by them to be 47 miles less than from St. Louis. A representative of the St. Louis mill testified that his company had not been a competitor within the past three years in western Iowa, where these destinations are located. Here, as in Missouri, the Burlington affords a one-line haul to certain stations from St. Louis and Hannibal, the average distance from which latter point and St. Louis, it may be noted, is practically the same as from complainants' mills.

The Oklahoma reductions asked for range from 1 to 12 cents. Defendants allege that the average rate from Ada, Okla., an average distance of 149 miles, is 11.9 cents, yielding a per ton-mile revenue of 16.9 mills, or 3.4 mills higher than the present rates which complainants pay. They also state that the average rate on cement locally in Oklahoma yields 15.9 mills.

In Texas complainants ask for the same rate as applies from Dewey, Okla., because Dewey takes their rate northbound As stated, the rates from Dewey into Texas are, generally speaking, 2½ cents lower than from the mills here in question.

In South Dakota claim is made for the Buffington., Ind., rates to the same points. Complainants' principal competition in South Dakota is with Buffington. It is alleged that the average mileage from Buffington is 97 miles greater than from these mills, but defendants show that Buffington is the extreme eastern point in a group which includes La Salle and Dixon, Ill., 100 miles west.

In Montana the prayer is for the extension of the Sugar Creek basis of rates, which applies from complainants' mills to various other points in the state, to certain stations on the Great Northern; Chicago, Milwaukee & Puget Sound; and Northern Pacific railways.

The complaint as to Colorado is directed to the relation between rates from the complainants' mills and from Portland, Colo., re-ively, to Colorado common points, principally Denver. The rate Portland to these points is 5 cents. In 1908 the carriers, by an

advance in the rate from complainants' mills from 15 to 17½ cents, widened the previous differential or spread of 10 cents in favor of Portland to 12½ cents. It is asked that the former spread of 10 cents be restored. The haul from the Kansas mills to Denver of approximately 600 miles is a steady rise in altitude of some 4,000 feet, for which service a per-ton-mile revenue is returned of about 5 mills. The Union Pacific's rate on cement from Kansas mills is 20 cents. The complaint as to these rates is based largely upon the maintenance of the previous relation to the rate from Portland for a considerable period rather than the inherent reasonableness of the rate from petitioners' mills.

To numerous points in western Nebraska complainants pay the same rates as are applicable from Sugar Creek, and they desire to have this relation established to the other Nebraska stations enumerated in the petition. The territory to which this basis is asked is west of a line drawn from Superior north through Edgar, Hastings, and Grand Island. East of this line it is suggested that the petitioners' rates should be 1½ cents higher than from Sugar Creek, this being the relation now existing as to Lincoln and Omaha. Complainants contend that, although their average distance to Union Pacific points in Nebraska is but 17 miles greater than from Sugar Creek, their rates are much higher, the present differential at Beatrice, for instance, which is more important to complainants than Omaha or Lincoln as a basing point, being 3½ cents over Sugar Creek. It is asked that their rates to Beatrice be made 1½ cents higher than from Sugar Creek, to correspond with the relative adjustment as to Omaha and Lincoln. The Union Pacific assails the competency of the mileage comparison to points on its line, which complainants figure from their mills via Junction City or Topeka, Kans., by stating that fully 75 per cent of its cement from complainants' mills is routed via Kansas City, a longer route. It insists that if Dewey, Okla., is included in the average mileage computation from the gas belt, as it should be because so grouped by the carriers, the average distance from the gas belt would greatly exceed that from Sugar Creek via any route from the former mills.

Complainants' contention as to Burlington stations in Nebraska is based upon the distance through Superior, Nebr., which is less than from Sugar Creek to the same destinations. The carriers contend that via Superior is not a feasible route, the Santa Fe stating that its haul from complainants' mills to Superior necessitates breaking of trains at Ottawa, Emporia, and Strong City, Kans., with local branch line service most of the way and a back haul between Ottawa and Strong City. It is also alleged that the track facilities for interchange at Superior are inadequate as to certain lines.

Following is a table of average distances and present and proposed rates and revenues per ton-mile, the number of destinations in each state being shown:

	Points.	Distance.	Present rate.	Present ton-mile.	Complainants' proposed rate.	Complainants' proposed ton-mile
Missouri	Kansas City	109	7.5	13.76	4	7.34
	15	199	10.6	10.65	9	9
	15	221	12.5	11.3	10	9
Iowa	31	394	14.7	7.46	12	6.09
Nebraska	106	381	21	11	18.56	9.74
South Dakota	39	633	27.46	8.67	20.2	6.38
Montana	14	1,275	49.7	7.8	42.7	6.7
Oklahoma	54	276	18.6	13.5	13.5	9.8
Texas	54	564	31	11	28.6	10.1

We must necessarily deal with these complaints in the same general way in which presented, in the realization that perhaps some of the individual rates may not be properly adjusted. Manifestly it is impracticable to do exact justice in a complaint as comprehensive as the one now under consideration. We shall therefore consider the record as a whole, with due regard to all its pertinent facts bearing upon the questions presented for decision.

If we adhere strictly to a per-ton-mile basis, to the exclusion of other appropriate tests, the Missouri, Nebraska, and Texas rates may seem somewhat high for a commodity of the value and character of cement. The rate per ton-mile, however, is but one of the many influences in rate adjustments and in the present case its value as a comparison is somewhat impaired by the fact that the rates of which it is a reflection apply as far south as Dewey and north to Kansas City on traffic in the opposite direction, all of which must be considered in determining the reasonableness of the return to the carriers. The rate to Kansas City is not materially higher than other rates established by the Commission in territory of denser tonnage, *Maritime Exchange* v. *P. R. R. Co.*, 21 I. C. C., 81, and as stated absorbs the Kansas City terminal charges. The rates in issue to Colorado, Iowa, Montana, and South Dakota do not appear to be in excess of a reasonable charge.

Except to distant points traffic has moved freely under the present rates, and these complainants have led in the volume of tonnage sold in Kansas City and at many of the Missouri, Nebraska, and Iowa stations in issue. The complaint in 4485 is based largely upon mileage comparisons with St. Louis and Kansas City, where the conditions of transportation are not shown to be substantially similar to the conditions at these Kansas points. The suggested readjustments also are relative in character with respect to Kansas City and St. Louis, the rate-making carriers from which points to much of the territory

in question do not reach the gas belt with their own rails. While the Commission is charged with the duty of preventing the exaction of rates shown to be unreasonable, its authority with respect to relative adjustments upon a mileage or other basis is more properly to be exercised where the transportation to the common destination is performed by the same carriers, or set of carriers, from the respective points of origin. *Chicago Lumber & Coal Co.* v. *T. S. E. Ry. Co.*, 16 I. C. C., 323. The record establishes that an overproduction of from 40 to 50 per cent in cement and a rapidly diminishing supply of natural gas which rendered manufacture cheap in the past have had a serious effect upon the cement trade in this field, and complainants' present troubles may be due to some extent to this cause. But however this may be, treating the matter from a transportation standpoint and considering all the facts, circumstances, and conditions appearing of record we do not feel that the interests of justice require the granting of the prayers of the petitions as to Kansas City, Missouri, Iowa, Nebraska, Colorado, South Dakota, or Montana.

The rates to Oklahoma are so manifestly out of line with the other rates involved in these proceedings that some reductions are necessary. We therefore find that these rates are unreasonable and unjustly discriminatory to the extent shown in the following table, and that for the future they should not exceed the rates shown therein to be reasonable:

From Iola, Chanute, Mildred, Humboldt, and Gas, Kans.; rates in cents per 100 pounds.

To—	Rates.		To—	Rates.	
	Present.	Reasonable.		Present.	Reasonable.
Tulsa, Okla	12	10	Chickasha, Okla	18	18
Muskogee, Okla	13	10	El Reno, Okla	15	15
Sapulpa, Okla	13	10	Anadarko, Okla	22	20
Okmulgee, Okla	13	10	Darrow, Okla	20	15
Sallisaw, Okla	15	12	Geary, Okla	20	15
Henryetta, Okla	15	12	Madill, Okla	20	17
Medford, Okla	15	12	Randolph, Okla	20	17
Blackwell, Okla	13.5	10	Mountain View, Okla	23	20
Cushing, Okla	12	12	Apache, Okla	22	20
Pawnee, Okla	12	12	Thomas, Okla	23	20
Chandler, Okla	13	13	Woodward, Okla	20	20
McAlester, Okla	15	13	Shattuck, Okla	22	20
Guthrie, Okla	12	12	Cordell, Okla	23.5	20
Shawnee, Okla	13	13	Roosevelt, Okla	23	20
Holdenville, Okla	15	13	Clinton, Okla	21	20
Wilburton, Okla	15	13	Hobart, Okla	23.5	20
Enid, Okla	15	13	Comanche, Okla	23	20
Oklahoma City, Okla	13	13	Lawton, Okla	20	20
Cherokee, Okla	17	15	Hugo, Okla	25	20
Carmen, Okla	18	15	Ardmore, Okla	20	20
Alva, Okla	17	15	Terral, Okla	25	20
Avard, Okla	18	15	Altus, Okla	24	20
Atoka, Okla	18	15	El Dorado, Okla	25	20
Le Flore, Okla	25	15	Mangum, Okla	23.5	20
Pauls Valley, Okla	20	15	Texola, Okla	24	20
Ada, Okla	18	15	Davidson, Okla	25	20
Durant, Okla	20	20	Geronimo, Okla	23	20

We desire to say, however, that we do not mean to be understood as sanctioning the rates prescribed above as maxima to Oklahoma as a standard of the reasonableness of cement rates in general in the territory involved in these proceedings. Only such reductions are made in the Oklahoma rates as will bring them substantially to a level with the rates in the other states allowed to stand. As stated, some of the latter may be somewhat high, and in dismissing the complaints as to them we merely follow our judgment that, considering the wide territory involved and the effect of the orders asked for upon the carriers' revenues and their related rate adjustments, the present records, which are largely made up of general mileage comparisons, do not, considered with reference to the general conditions, warrant us in making an order in the general disturbance of these rates.

It seems probable that the maintenance of a proper relation of rates, not only with St. Louis and Kansas City, but as well Des Moines, Mason City, and perhaps other points, is essential to any permanent relief to complainants with respect to such individual rates as may require readjustment, but the present record is equally inadequate to effect this result. Our disposition of these cases will not interfere with the voluntary action of the carriers in removing any just cause of complaint due to relative rates from any of the mills competing in this general territory.

No. 3994.

NATIONAL REFINING COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.

Submitted October 19, 1911. Decided May 7, 1912.

Complainant shipped from Muskogee, Okla., to Coffeyville, Kans., a number of carloads of the so-called lighter ends of petroleum oil, which had been separated from the crude oil by a process of skimming, but was useless for commercial purposes until a further process of refinement had been undergone. Defendants assessed the rates applicable to refined oil; *Held*, That a reasonable rate on the commodity shipped would not have exceeded by more than 2 cents per 100 pounds the rates contemporaneously applicable to crude oil, which relationship should be established for the future. Reparation awarded.

E. J. Blandin and *C. D. Chamberlain* for complainant.

Joseph M. Bryson, C. S. Burg, and *J. W. Allen* for Missouri, Kansas & Texas Railway Company.

Herbert J. Campbell for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

Report of the Commission.

By the Commission:

The complainant is a corporation engaged in the oil business and has a refinery at Coffeyville, Kans. In its petition, filed April 5, 1911, it alleges that unreasonable rates were charged by defendants for the transportation from Muskogee, Okla., to Coffeyville of a certain distillate of petroleum oil consisting of the lighter ends of the crude oil. Reparation and the establishment of a reasonable rate are sought.

The oil in question was purchased f. o. b. cars at Muskogee from two concerns, the Merchants Oil Company and the Muskogee Refining Company, and was shipped by these concerns for complainant's account and under its instructions. Of the 77 carloads covered by freight bills filed in the record, 51 moved over the Missouri, Kansas & Texas Railway between October 8, 1909, and March 25, 1910. The weight of these shipments aggregated 2,900,159 pounds, and charges were paid by complainant in the sum of $3,480.02, based on a rate of 12 cents per 100 pounds.

The remaining 26 carloads moved over the Missouri, Oklahoma & Gulf Railway and the St. Louis, Iron Mountain & Southern Railway, hereinafter referred to as the Iron Mountain route, the charges

being assessed at various rates. During November and December, 1909, 10 carloads, of an aggregate weight of 573,091 pounds, were shipped, and charges were collected thereon in the sum of $859.62, at a rate of 15 cents per 100 pounds. From March 24 to April 30, 1910, 9 carloads, of an aggregate weight of 529,089 pounds, were shipped, and charges were paid in the sum of $634.90, at a rate of 12 cents per 100 pounds. During May, 1910, 7 carloads, of an aggregate weight of 363,707 pounds, were shipped, and charges were paid thereon in the sum of $1,309.35, at a rate of 36 cents.

The distance from Muskogee to Coffeyville over the Iron Mountain route is 98 miles. The rate of 12 cents per 100 pounds charged by the Missouri, Kansas & Texas Railway Company was the rate applicable to the transportation of crude oil during all of the period when these shipments were made. Over the Iron Mountain route a rate of 15 cents for the transportation of crude oil was in force during November and the greater part of December, 1909. Effective December 25, 1909, this rate was reduced to 12 cents, and so remained until June 30, 1910, when it was further reduced to 10 cents per 100 pounds. The rate of 36 cents charged on the 7 shipments in May, 1910, was the fifth-class rate applicable to the transportation of refined oil. On September 12, 1910, the Missouri, Kansas & Texas reduced its rate on refined oil, Muskogee to Coffeyville, from 36 to 17 cents; but the rate on refined oil over the Iron Mountain route is still 36 cents; although to Kansas City and certain other points to which the traffic moves through Coffeyville this route maintains a 17-cent rate on refined oil. At the time that the crude-oil rate was reduced to 10 cents the Iron Mountain route established a rate of 12 cents on fuel oil, which had formerly taken the same rate as crude oil. The rate on crude oil was reduced from 15 to 12 cents via the Missouri, Kansas & Texas on February 13, 1909, and via the Iron Mountain route on December 25, 1909.

Under the western classification petroleum oil and its products are rated fifth class. But it has been the practice of carriers in this territory to fix commodity rates lower than the class rates between points where there is any considerable movement of petroleum oil, and these commodity rates have come to be the normal rates in comparison with which other rates for the transportation of petroleum oil and its products in this territory are to be measured.

The rates on crude oil, as named above, over both routes were commodity rates, but no commodity rate on refined oil between Muskogee and Coffeyville was published until September 12, 1910, which was subsequent to the movement of all the shipments under consideration; and, therefore, if they are to be classed as refined oil, the lawful rate on all of these shipments, under the tariffs in force, was 36 cents. It is the contention of the carriers that they should

have been so charged. Complainant asserts that they should have moved under the rates applicable to the transportation of crude oil; and that in view of the reduction in the rate on crude oil to 10 cents per 100 pounds, though that reduction was made subsequently to these shipments, the charges should be based on a rate not exceeding 10 cents per 100 pounds.

Upon the arrival of the shipments at Coffeyville they were examined by an inspector of the Western Railway Weighing & Inspection Bureau, who classified the commodity as a refined oil, and thereupon bills for the difference between the amount paid and the amount that would have been paid, based on the rate applicable to refined oil, were presented to complainant. These undercharge bills, amounting to about $8,000, have not been paid, complainant refusing payment until the proper rate has been determined by the Commission.

The product that was shipped seems to have no distinct commercial designation or trade name; by complainant it is referred to as "crude product"; one of the shippers described it in the bills of lading as "crude benzine"; the carriers classed it as refined oil. The evidence shows that the crude oil had undergone a skimming process, and that this commodity was one of the two resulting products. The Muskogee crude, as it comes from the well, has too low a fire test to be salable as fuel oil; by the skimming process the lighter ends of the oil are extracted, and the heavier residue becomes marketable as fuel oil.

This skimming process is accomplished by distillation carried just far enough to separate the lighter from the heavier oil, the former amounting to about one-fourth part of the oil. The extracted product, though not separated in accordance with any specifications, may, therefore, properly be roughly described as a light-end distillate, and that designation will be used in this report. It was this product that was shipped, and complainant's testimony was to the effect that it had no commercial value except for refining purposes; that at complainant's refinery it was kept separate from the crude oils and refined into gasoline, naphtha, turpentine substitute, and a residuum sold as fuel oil.

For refining purposes this light-end distillate commanded a higher price than the crude oil from which it was extracted. Complainant's president testified that the price of the Muskogee crude oil at the time of purchase was 2 cents per gallon; he was not certain, but thought he paid 3 cents for the light-end distillate. The information of defendants was to the effect that the price was 3¼ cents. Complainant's president testified that, at the time of this purchase, he was in special need of material for lighter-end products, and for this reason was willing to pay a price higher than is customary for this distillate. Under ordinary circumstances it would be more profitable to use a straight crude oil.

Complainant's testimony was to the effect that this light-end distillate met a specific demand that was not met by the crude oil, and that, in view of this demand, a higher price was paid for it than would be paid for the crude oil. Whether or not that demand was a special one, existing only at that particular time so far as complainant is concerned, does not affect the essential facts.

As we have seen, the rate of 36 cents on refined oil at the times these shipments moved was the fifth-class rate, and was applicable only because no commodity rate had been established between Muskogee and Coffeyville. Its unreasonableness is clearly indicated by the fact that, a few months later, one of the routes established a commodity rate of 17 cents, less than one-half of the class rate, and the other route maintains a 17-cent rate to points much more distant than Coffeyville. Moreover, this light-end distillate, while it had been increased in value by a process of manufacture, was not what is commercially understood as a refined product of petroleum oil. It was of value only as a material for further processes of refinement, and its price of 3¼ cents was materially below the prices of the articles into which it was ultimately separated. If 17 cents per 100 pounds is a reasonable rate for the transportation of gasoline, naphtha, and other products of petroleum oil, it is too high for the movement of this light-end distillate.

In determining rate to be applied to the transportation of this commodity we are assisted by the action of one of the routes in regard to fuel oil, on which it has established a rate 2 cents in excess of the rate on crude oil. Fuel oil is produced from the Muskogee crude oil by the identical process that extracts this light-end distillate. Each has undergone the same degree of manufacture, and, while there is some difference between the prices of the fuel oil and the light-end distillate, the gap between them is not so great as that which separates them from the commercially refined products. The record leads us to conclude that a rate not more than 2 cents per 100 pounds in excess of the rate on crude oil would be a reasonable rate from Muskogee to Coffeyville on this distillate.

Complaint is made that the crude-oil rates of 12 and 15 cents applied to some of these shipments were unjust and unreasonable. The evidence presented in support of this contention is a reference to the subsequent reduction of the rate to 10 cents and a number of exhibits showing the rates on crude oil between various points. Upon the record we are not convinced that these rates of 12 and 15 cents were unreasonable at the times they were in force. The Commission has repeatedly held that the voluntary reduction of a rate is not satisfactory proof of the unreasonableness of the prior rate.

Upon consideration of all the facts appearing of record, the Commission is of opinion and finds that a rate for the transportation from

Muskogee to Coffeyville of the light-end distillate produced by the so-called skimming process that exceeded the rate contemporaneously charged for the transportation of crude oil by more than 2 cents was unjust and unreasonable, and that the carriers defendant herein should establish and maintain for a period of not less than two years this relationship between the rates on crude oil and this light-end distillate.

We further find that complainant made the shipments as described in the foregoing statement of facts; that the charges paid by complainant, in the sum of $1,309.35, at a rate of 36 cents, on 7 carloads of this light-end distillate which moved during May, 1910, over the lines of the Missouri, Oklahoma & Gulf Railway and St. Louis, Iron Mountain & Southern Railway, as hereinbefore set forth, were unjust and unreasonable so far as they exceeded $509.19, the charges which would have accrued at the reasonable rate of 14 cents per 100 pounds; that complainant has been damaged in the difference between said amounts; and that it is, therefore, entitled to reparation from said defendants in the sum of $800.16, with interest from August 15, 1910.

We further find that the rate of 36 cents per 100 pounds claimed by defendants on the remaining shipments was unjust and unreasonable so far as it exceeded 14 cents per 100 pounds for the transportation over the Missouri, Kansas & Texas Railway, and so far as it exceeded 17 cents on the shipments prior to December 25, 1909, over the Missouri, Oklahoma & Gulf Railway and the St. Louis, Iron Mountain & Southern Railway, and so far as it exceeded 14 cents on shipments over the latter route after December 25, 1909. The payments on these several shipments having been less than the amounts here found to be just and reasonable, the carriers should collect the amounts due thereon.

The record indicates, as noted, that there is no trade name or commercial designation for the commodity here in question; and we deem it best to leave the description of this commodity, in the first instance, to defendants, who are doubtless able to so amend their tariffs as to establish the rates above found reasonable in such language as will not lend itself to misunderstanding or afford opportunities for misbilling. If the tariffs are not amended within sixty days so as to conform to our conclusions, an order respecting the rates for the future will be entered. An award of reparation will be made at this time.

hauled therefrom by an engine of the Kola Lumber Company to the latter's plant at the end of its logging road in the woods and there placed on a siding built and owned by the Leaf River Turpentine Company, of which complainant owns one-half the stock. The car was put on the latter siding to await instructions for loading and shipping and remained there until it was loaded early in March, 1910, and on orders of the Leaf River Turpentine Company was hauled by the engine of the Kola Lumber Company to Kola and tendered for forwarding to the Gulf & Ship Island Railroad March 12, 1910. A demurrage charge of $78 on this car was assessed by the Gulf & Ship Island Company and paid by complainant.

The demurrage tariff of the Gulf & Ship Island during the time the car was standing in the woods and when subsequently moved to destination provided for the usual charge of $1 per day after 48 hours free time on—

cars held for or by consignor or consignee for loading, unloading, forwarding directions, or for any other purpose are subject to these demurrage rules, except as follows:

(b) Private cars on tracks of the owner or on privately owned tracks of the consignor or consignee, when used for the transportation of commodities which the owners of the cars produce or in which they deal.

(e) Empty cars held by railroads for prospective loading, or empty private cars held on private tracks for prospective loading, provided such cars have not been ordered placed for loading.

The Kola Lumber Company, which operates the logging road, is not a party to this tariff nor does it hold itself out to be a common carrier. It has no through routes or joint rates with the Gulf & Ship Island Railroad or with any other common carrier.

Under these circumstances and under the provisions of the Gulf & Ship Island tariff above set out we are of the opinion that the collection of demurrage charges on the car in question was unlawful. It seems clear that when the private car of the complainant was placed upon the siding of the Kola Lumber Company at Kola it was not placed there for loading. It was removed within the free time to a private siding owned by the consignor and consignee. In such case the tariff in express terms excepts the car from demurrage.

With respect of the other shipment the evidence shows that the Gulf & Ship Island under similar circumstances received complainant's empty tank car No. 408 at Jackson, Miss., billed empty to Kola, Miss., for loading and placed it on the siding of the Kola Lumber Company, at Kola, July 16, 1910. Within 48 hours an engine of the Kola Lumber Company hauled the car to the terminus of the Kola Lumber Company's road in the woods, where it remained on the siding of the Leaf River Turpentine Company until it was tendered loaded to the Gulf & Ship Island on September 27, 1910, and billed

to Chicago. On this car there was collected $52 demurrage. During the time the demurrage accrued on this car the Gulf & Ship Island had in effect a demurrage tariff which provided charges of $1 per day after 48 hours free time, subject to the following exceptions:

(c) Empty private cars stored on carrier's or private tracks, provided such cars have not been placed or tendered for loading on the orders of a shipper.

NOTE.—Private cars while in railroad service, whether on carrier's or private tracks, are subject to these demurrage rules to the same extent as cars of railroad ownership.

(Empty private cars are in railroad service from the time they are placed by the carrier for loading or tendered for loading on the orders of a shipper. Private cars under lading are in railroad service until the lading is removed and cars are regularly released. Cars which belong to an industry performing its own switching service are in railroad service from the time they are placed by the industry upon designated interchange tracks and thereby tendered to the carrier for movement. If such cars are subsequently returned empty they are out of service when withdrawn by the industry from the interchange; if returned under load, railroad service is not at an end until the lading is duly removed.)

It is as clear under the circumstances of this case as in the case of the car first considered that the demurrage did not lawfully accrue. The car was forwarded empty for loading; it was not placed for loading at Kola and could not have been loaded there.

It is the contention of the defendant that complainant billed the empty car to Kola for loading and thus placed it in railroad service; that if it desired the car to be taken out of railroad service it should have notified the Gulf & Ship Island Company. The tariff does not provide for such notice, but on the other hand clearly states that empty private cars when withdrawn from the interchange track are out of the service.

The case of *Procter & Gamble Co.* v. *C., H. & D. Ry. Co.*, 19 I. C. C., 556, is relied upon by defendants to sustain their contention, but in that case there was presented a different situation, and it is therefore not controlling here.

For the reasons above given, the demurrage charges collected were not in accordance with the tariffs, and an order will issue awarding complainant $78 with interest from April 1, 1910, and $52 with interest from October 15, 1910.

No. 4033.

IN THE MATTER OF WHARFAGE CHARGES OF THE GALVESTON WHARF COMPANY, AT GALVESTON, TEX.

INVESTIGATION AND SUSPENSION DOCKET No. 44.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF I. C. C. NO. 2 FILED BY THE GALVESTON WHARF COMPANY.

INVESTIGATION AND SUSPENSION DOCKET No. 53.

IN THE MATTER OF LOADING AND UNLOADING CHARGES AT GALVESTON, TEX.

Submitted March 9, 1912. Decided May 13, 1912.

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1. Order suspending a tariff of the Galveston Wharf Company increasing its charges on traffic moving over its piers made permanent, and the petition of the Texas City Terminal Company for increased divisions denied. The trunk line carriers ordered to correct discriminations in the allowances made out of the rate to the two companies.
2. A commission of 1½ cents a bale paid by the terminal line to a broker for routing cotton for export through the port of Texas City is an unlawful concession from the rate. A subsidy paid to certain ocean carriers to enable them to offer shippers a lower ocean rate from Texas City than from Galveston operates as a rebate and is unlawful.
3. Free wharfage is a legitimate means of making a port attractive to ocean lines, and the Texas City interests in pursuing that policy will be protected against any coercion by the carriers.

S. H. Cowan, *N. A. Stedman*, and *M. E. Kleberg* for Galveston Wharf Company.

F. C. Dillard and *H. M. Garwood* for the Galveston, Harrisburg & San Antonio Railway Company and Southern Pacific Terminal Company.

H. M. Garwood for Galveston, Houston & Henderson Railroad Company.

H. M. Garwood and *T. J. Norton* for Gulf, Colorado & Santa Fe Railway Company.

A. S. Coke and *A. H. McKnight* for Missouri, Kansas & Texas Railway Company of Texas.

N. H. Lassiter for Trinity & Brazos Valley Railway Company.

T. J. Freeman, *H. G. Herbel*, and *S. B. Dabney* for International & Great Northern Railroad Company.

W. T. Armstrong and *Edward F. Harris* for Texas City Company, Texas City Terminal Company, and Texas City Transportation Company.

H. H. Haines for Galveston Commercial Association.

Report of the Commission.

Harlan, *Commissioner:*

This controversy has developed out of the efforts of the port of Texas City to share in the import and export traffic which for many years has moved through the port of Galveston. The interests more immediately involved are the Galveston Wharf Company, hereinafter referred to as the wharf company, and the Texas City Terminal Company, hereinafter referred to as the terminal company. The Galveston Commercial Association, representing the business men of the city, has intervened in the interest of that community.

The wharf company maintains the most important and extensive terminal and dock property at Galveston. It has been in operation since 1854. The terminal company, on the other hand, maintains at Texas City a wharf property that is much less extensive and of more recent origin. It is the only facility of the kind at that port. The same interests also own and operate the tracks that lead to the several piers on this wharf and connect them with the trunk lines. While it is understood that the Texas City interests are also striving for other traffic, both import and export, the recent rapid development of the export cotton traffic through that port has contributed more than anything else to foment the controversy and precipitate this contest before us.

Growing out of the controversy between the two communities and their respective wharf companies is an incidental controversy between the trunk lines and the Galveston Wharf Company. The latter alleges that the carriers are discriminating against it in favor of Texas City; the carriers, on the other hand, question the reasonableness of the charges which the wharf company now exacts on traffic handled by it over its piers and the reasonableness of the increased charges which it proposes to demand. The terminal company at Texas City is also in controversy with the carriers, and is demanding a relief order giving it an increased share of the through charges. During the course of the hearing facts were also developed showing a violation of the act in two important particulars in connection with the traffic in cotton moving through Texas City for export. These matters will be referred to presently. We shall first briefly consider the situation at Galveston.

For many years and until February 20, 1911, when the decision was announced in *Southern Pacific Terminal Co. v. I. C. C.*, 219 U. S., 498, the Galveston Wharf Company had filed no tariffs with this Commission, its transactions being conducted on the theory that it was not subject to the provisions of the act to regulate commerce. Immediately after the conclusions of the court in that case were made public, it commenced the preparation of a schedule of rates and charges, which was filed here on April 3, 1911. Under its provisions the wharf company assumed the duty, theretofore performed by the carriers, of loading and unloading freight passing over its piers; it employed the same contractor that had been doing the work for the carriers and set up the same charge. Although the trunk lines entering Galveston immediately protested against this new order of things and asked that the tariff be suspended, we declined to take that course. It was the first and only tariff of the Galveston Wharf Company on file here, and an order suspending its operation would have left the wharf company without any lawful rates and would therefore have obliged it either to cease its operations or to handle the traffic of the port in violation of the act. We therefore allowed the tariff to go into effect, but entered an order on April 21, 1911, instituting an inquiry respecting the rates, charges, rules, and regulations of the wharf company. On April 26 the wharf company filed its tariff No. 2, by the terms of which it proposed to substitute class and commodity rates for the switching charge of $1.75 a car provided in its first tariff. The new tariff by its terms was to become effective on June 9, 1911, but its operation was suspended by our order pending this investigation. In connection with their protest against the two tariffs filed by the wharf company the Galveston Bay lines connecting with the wharf company's rails filed tariffs providing that they would no longer absorb the loading and unloading charges on certain commodities. The operation of these tariffs was also suspended.

The inquiry therefore includes not only the relations between the trunk lines and the two wharf companies, but also the question whether any discrimination grows out of those relations in favor of one community as against the other, and whether the divisions or allowances received from the trunk lines by the two companies are adequate or discriminatory, and whether in the rates, charges, and practices of the two companies there is anything unlawful. It will be helpful to an understanding of the matter first to examine briefly the history of the wharf company and of its charges.

Until 1898 the wharf company operated the only wharves and piers in Galveston. Incorporated in 1854 as the Galveston Wharf & Cotton Compress Company, its name was changed in 1860 to the Galveston Wharf Company. In 1870 the legislature gave it the right to

construct and operate a railroad connecting with lines entering Galveston. Out of the grants from time to time by the municipal authorities of the right to use and cross the public highways of the city litigation finally resulted and was followed by a compromise in which the city of Galveston acquired a one-third interest in the wharf property. Adjoining it on the north is the wharf property of the Southern Pacific Company, operated under the name of the Southern Pacific Terminal Company, and having an improved frontage of 700 feet on the water. The wharf company occupies the remaining 2¼ miles of water frontage on the channel, with a total available docking space of 5¼ miles. There are 18 piers, at which as many as 50 vessels may tie up at one time. Large sums have been expended by the Government in deepening and widening the channel, and practically all the improved property of the wharf company is available to ocean-going vessels of large tonnage.

Prior to December 1, 1907, the tracks leading to its various piers and connecting them with the trunk lines, although owned by the wharf company, were operated jointly by the Galveston, Houston & Henderson and the Gulf, Colorado & Santa Fe for all the lines reaching Galveston. Until December 1, 1899, the wharf company, for the use of its tracks in that way, was paid a trackage charge of $1 for each loaded car. On that date the charge was reduced to 50 cents. In addition, the carrier having the line haul paid the two carriers so operating the wharf tracks a switching charge of 90 cents for each loaded car. The two items aggregated a charge of $1.40 a car, the empty car in all cases being handled without additional charge. The service of loading and unloading cars was performed by independent contractors who were paid directly by the carriers on their respective traffic.

This arrangement continued until December 1, 1907, when the wharf company, having equipped itself for the work by purchasing eight locomotives, took over the operation of its wharf tracks. After the latter date the carriers no longer switched the cars to and from the piers, but the contractors continued to load and unload as before and were paid for the service by the carriers. Upon undertaking the operation of its tracks the wharf company set up a switching charge of $1.75 for each loaded car in place of the charge of $1.40 theretofore accepted by the trunk lines operating the tracks. Under its tariff No. 2, the operation of which was suspended by the order of the Commission as heretofore stated, the wharf company proposed to withdraw the switching charge and for it to substitute class and commodity rates. This involved the withdrawal also of the specific charge for ing and unloading provided in its tariff No. 1, the cost of that being included in the proposed rates named in tariff No. 2.

From the view that we take of the case it will not be necessary to state the commodity rates in detail. The class rates proposed in the suspended tariff are as follows:

Class	1	2	3	4	5	A	B	C	D	E
Rate	6	6	6	6	2½	2½	2½	2½	2½	2½

It will at once be seen that tariff No. 2, if allowed to become effective, will impose very substantial additional burdens on the class traffic moving over the piers of the wharf company. In many cases it will add additional burdens on the commodity traffic. The present charge on a carload of 20 bales of cotton, for example, is $2.35, including the unloading. Under its tariff No. 2 the wharf company would exact $2.70.

The Texas City interests were made formal parties to the controversy by a petition filed with us by the wharf company on May 19, 1911, in which it was alleged that the carriers were discriminating in favor of that port, and that as the result of the situation and of the activities of the Texas City interests and the unlawful practices of the terminal company the cotton traffic was being rapidly diverted from Galveston, through which port under ordinary circumstances it would naturally move. The record shows that the traffic of Texas City is developing rapidly under the stimulus of the efforts made to secure it. In 1904 the work of providing a 25-foot channel to that port was brought to a conclusion at a cost to the Texas City interests of $581,000. Shortly thereafterwards the Government took over the channel and reimbursed those interests to the extent of $250,000. It then proceeded to expend large sums of money in further developing the channel. In 1904 but 12 vessels of 15,171 tons registered at the port, and the value of their cargoes was recorded at $998,428. In 1910 some 239 vessels of 441,943 registered tons entered the harbor, with cargoes valued at $43,213,753.

Texas City is in Galveston Bay, about 8 miles north of Galveston. Because of its insufficient depth the channel to Texas City can not be used by the large ships that go to Galveston; and ocean vessels can not make the port without the aid of tugs, a condition that does not exist at Galveston. The charge against a vessel for this service is $50 when proceeding unloaded to the port, and $150 when brought down with its cargo. Texas City is also at a disadvantage in that the channel to the port can not be navigated at night as at Galveston. Those interested in the development of Texas City realized, therefore, that in order to induce ships to come to the port and shippers to route their traffic to it, both ship and shipper must have some advantage not offered by the port of Galveston. It was therefore determined to operate their wharf property without assessing a wharfage charge in addition to the rate, as is the case at Galveston; and for several years, while the wharf company at Galveston assessed a charge of 1½ cents

per 100 pounds over and above the rate, no such charge has been demanded at Texas City. The fact was extensively advertised, but apparently was not an inducement of sufficient importance to move much traffic to the port. The terminal company's explanation is that until 1910 their wharf facilities were too limited.

Whatever may have been the real cause of the failure of traffic to seek that port in the volume desired by the interests in control there, it became clear that further inducements must be offered to the shipping public. Thereupon, conferences were arranged with a Mr. J. H. F. Steele, an ocean freight broker at Galveston, who is said to control the routing of possibly more cotton for export than all the other brokers at Galveston combined. To secure his traffic the Texas City interests arranged to pay him a personal allowance of 1½ cents for each bale exported through Texas City. As an inducement to the shippers for using that port he undertook to have the Harrison, the Leyland, and the Elder Dempster lines make from Texas City a rate on cotton for export 1 cent lower than they demanded from Galveston. In these negotiations he was successful. Despite the fact that it involves a slightly longer water haul and that vessels must pay towing charges of about $200 in order safely to make the port and return with a cargo, those ocean lines were induced to go to Texas City and make the lower rate. The free wharfage at Texas City meant a saving of the wharfage charge of 1½ cents per 100 pounds at Galveston and enabled the ocean lines to offer a rate from Texas City 1 cent lower than from Galveston, the remaining one-half cent per 100 pounds being sufficient to take care of the towing charges and to leave a substantial surplus.

The result of these arrangements was a rapid increase in the volume of cotton moving to Texas City for export; and the diversion of the traffic from its own wharves promptly aroused the Galveston Wharf Company to action. It protested to the carriers that the divisions allowed to the terminal company were in excess of the amounts paid to the wharf company for similar services and enabled the terminal company, through the devices described, to pay rebates to shippers and to offer them free wharfage, a privilege that the wharf company could not afford to grant at Galveston. It therefore demanded that the divisions being accorded to Texas City should be decreased. These protests extended over some months. Finally, in November, 1910, the carriers, disregarding the policy of the Texas City interests not to impose a wharfage charge, and disregarding the understanding between Mr. Steele and the terminal company that no such charge would be exacted, raised their rate to that port on cotton for export from 51 to 52½ cents, intending that the additional 1½ cents should accrue to the terminal company for wharfage. This was done over its protest, as the terminal company contends. The revenue from

that source is nevertheless received by the terminal company, but is carried in what it calls a suspense account.

The Texas City interests refer to this action by the carriers as having forced a wharfage charge upon the port contrary to the policy of those in control there. The purpose of the carriers in adding the charge was to put the port on a parity with the port of Galveston. The action was taken in the midst of the cotton-shipping season. Believing, as we are told, that the increase in the export rate would tend to stop shipments to that port and that it might be of serious consequence to have the cotton movement break down in that manner, the Texas City interests therefore conceived the idea of subsidizing the steamship lines to the extent of the wharfage charge of 1½ cents so imposed upon the port by the carriers. Such an arrangement was effected, and although there is some confusion in the testimony as to the precise date when the payment of the subsidy was commenced, the record shows that it is still being paid.

Cotton for export continued to move to Texas City in increasing volume and the wharf company renewed its protests. It insisted that the divisions allowed by the carriers to its competitor at Texas City enabled it to pay rebates to the shippers and to offer them privileges that it could not afford to grant to shippers through Galveston. Finally, the carriers reduced their divisions with the terminal company by from 25 to 30 per cent. But the wharf company did not deem this sufficient and thereupon demanded allowances equal to the highest divisions accorded to the terminal company. This the carriers refused.

We need not follow the details of the controversy further. As a result of the whole situation the wharf company filed its tariff No. 1 and shortly thereafter its tariff No. 2. It is not altogether clear how its position could be advanced by imposing additional burdens on traffic moving over its piers, or how its tariff No. 2, by which its charges were substantially increased, could be regarded as an effective weapon in meeting the growing competition of Texas City. Apparently it pursued this course not because it desired or thought it was entitled to increased earnings, but simply as a step in the fight with its competitor. In a letter dated March 26, 1910, and addressed to all of the carriers entering Galveston, the wharf company disclaimed any desire to impose additional burdens upon the carriers or upon the traffic passing over its piers, but said "we do feel justified in asking the railroads to equalize Galveston with Texas City." In a subsequent communication no hint was given of any demand for increased earnings; the statement made was that it did not feel that it could longer delay a step to remedy a condition which "in our opinion unjustly places this company and the port of Gal-

[illegible] Texas City. [illegible] the same general [illegible] complain that the arrangement [illegible] the unlawful purpose of affecting the rates [illegible] that port and that the result is of great [illegible] present and future prosperity. The same [illegible] is [illegible] of Galveston as a community by the Galveston Commercial Ass[illegible]. We [illegible] therefore take a close view [illegible] ditions and cir[illegible] under which the payment is made.

In the first place it is affirmatively shown of record that the plan of paying a subsidy to the ocean carriers was the direct and immediate result of the action of the trunk lines in raising their rate on cotton for export by including in it a wharfage charge at Texas City. Under this tariff the carriers retain only their previous earnings, namely, their local rate of 51 cents; the additional 1½ cents, under the express terms of the tariff, accrue to the terminal company as a wharf charge. This put the port on a parity with Galveston and left the ocean carriers without any inducement to make Texas City a port of call, and left the shippers without any inducement to route their cotton through that port. Instead of insisting, however, upon its own policy of conducting its wharf without a wharf charge, the terminal company merely protested and then accepted the revenue from that source. Arrangements were thereupon made to offer the inducement in the form of a subsidy or bonus to the ocean carriers, as heretofore explained. In its results the subsidy again left the port without a wharfage charge; that is to say, it enabled the ocean lines still to offer a 1 cent lower ocean rate from Texas City than from Galveston; it enabled them also to pay the towing charges of $200 and in addition left them a surplus substantial enough to induce them to make Texas City a port of call. It gave the shippers a lower ocean rate than they could get from Galveston. In other words, it was a rate situation that the Texas City interests undertook to adjust so that shippers of cotton would use the port and the ocean lines would come to it. In this connection it must be observed that cotton for export passes through the port and does not stop there. It is therefore not a traffic that may be said to result directly to the advantage of the community, although it may indirectly tend to build it up. The movement through the port is, however, of immediate advantage to the interests that own the wharf property and the terminal railroad. There is a community at Texas City having a population, as we are informed, of about 3,500 persons. It is not the community, however, that pays the subsidy. It is the land company, which is a part of what we have hereinbefore referred to as the Texas City interests. That company and the terminal company were organized on the same day, by the same people, and in the same interest. The record, we think, makes this clear.

In addition to the land company, the terminal company, and the transportation company hereinbefore mentioned, the Texas City interests involve two other companies, the Southern Investment Company and the Texas Investment Company. Both are mere holding companies. The Southern Investment Company owns all the stock of the land company with the exception of the few shares necessary to qualify the directors of the land company. It has no other property or assets. The terminal company is owned by the transportation

company, which in turn is owned by the Texas Investment Company, with the exception of the few shares necessary to qualify the directors of the transportation company. The Texas Investment Company also has no other property or assets than the stock of the transportation company. The stockholders in the two holding companies are substantially identical; [illegible] of the [illegible] stockholders in the Texas Investment Company own all but [illegible] of its 5,000 shares; and these same [illegible] people also own [illegible] of the [illegible] shares of the stock of the Southern Investment Company. Reduced to simpler terms, more than four-fifths of the stock of the Southern Investment Company and practically nine-tenths of the stock of the Texas Investment Company are held by the same persons. Under these circumstances we regard it as a mere pretense to contend that these various companies are not under one general control, with one general policy to work out in order to make the general investment successful. The argument is that the terminal company, the land company, and the transportation company each has its own distinct legal and lawful existence as a Texas corporation and that each is a distinct legal entity, a separate and distinct artificial person created by and under the authority of the state of Texas. This, however, is not enough. The law forbids the evasion of its provisions by any device whatsoever, and if unlawful results are worked out in that manner, as we find to be the case here, the method by which the result is accomplished is not controlling. At any rate, until some higher authority establishes a different principle as a guide in our deliberations in such cases we do not see how we can permit the equality of opportunity in the use of public transportation facilities, so often spoken of by the courts as the real purpose of this legislation, to be broken down and nullified by the creation of corporate entities that are disassociated in form but are nevertheless responsive to the same general policy and subserve the same general investment.

Nevertheless we must not fail to observe the limitations the law has set to our own authority. We may deal with the rates and practices of carriers for the purposes and in the manner prescribed by law; but we are not authorized to control the general policy of carriers in their competition with one another or to regulate the general management of their properties or to interfere with legitimate means adopted by them in the form of favorable rates, services, and privileges to secure the traffic of the public and the good will of shippers. When not in contravention of law these matters, generally speaking, are beyond our control. In other words, Texas City interests are wholly within their own rights when adopt a policy of demanding no wharf charges on traffic passing heir piers. Whether that is a wise course or not is their affair

and not ours. Their experience has shown that the proximity of the harbor at Galveston, where no towing is required and other conditions are advantageous for ocean traffic, makes it necessary, in order to divert the traffic to Texas City, to offer some inducement both to the shipper and to the ocean carrier. So long as the inducement is lawful it is clear that Galveston must meet the competition or take the consequences; and free wharfage we regard as a legitimate means of making the port attractive to ocean lines. Moreover, if that is the real policy of the terminal company it ought to insist upon it. This it can do by withdrawing its concurrence in the 52½-cent rate published by the carriers against its protest. Should it pursue that course, we deem it proper now to say that it will be fully protected by this Commission. If the carriers undertake, by withdrawing the 51-cent rate, or by refusing through billing, to coerce the terminal company in its policy of offering a free port to the ocean carriers, we should not hesitate, as at present advised, to restore the rate or to enter such other order as may be necessary to protect its rights.

But the privilege of free wharfage, which the Texas City interests wish to be characteristic of their port, must be offered to the shipping public in a lawful form; it can not be given indirectly and unlawfully. The Texas City interests, as heretofore stated, assert that the carriers, disregarding their policy of offering free wharfage, forced a charge of 1½ cents on the port. But the terminal company accepted the revenue thus accruing on the traffic passing over its piers and then set about to get the advantage of its policy in another form, namely, by having the land company pay a subsidy of the same amount to the ocean lines, charging it to "development account." We think this is unlawful. A rebate may be effected by what is equivalent to cash just as successfully as when paid in cash. In either form it is unlawful. The Texas City interests permit a wharfage charge to be included in the rate and then give the shipper a concession from it by paying for him to the ocean carrier a part of the ocean rate. If the interests in control at that port wish to compete with the port of Galveston by offering the shippers the privilege of free wharfage they must do so in a lawful way. In this form we find it to be an unlawful concession from the rate.

The record makes it clear that this controversy did not originate as a demand on the part of the Galveston Wharf Company for increased earnings. Nevertheless, it has filed its tariff No. 2, under which, if allowed to become effective, substantially higher charges will be imposed on traffic passing over its piers; and during the course of the hearing testimony was offered for the purpose of supporting the allegation that the increased charges are reasonable and that the wharf company is entitled to increased earnings.

Elaborate valuations of its property and other financial exhibits were offered in evidence. It will not be necessary, however, to make a full statement here of the facts thus disclosed. Its outstanding capital stock is $2,626,600, and this amount has not been changed since 1870. The original cost of the property is not shown. It appears, however, that when the Galveston Wharf & Cotton Compress Company became the Galveston Wharf Company the latter issued 9,994 shares of its stock in exchange for the outstanding stock of its predecessor. It also appears that 9,950 shares were issued for "property purchased"; 6,222 shares were issued to the city of Galveston to effect the compromise heretofore mentioned, 100 shares being given to attorneys participating in the litigation. The property account as shown on its books amounts to $7,177,302, including the capital stock of $2,626,600. The carriers contend, and the record discloses nothing to the contrary, that every dollar expended on the property since 1870 has been paid for out of earnings except the bonded indebtedness of $2,650,000 secured by mortgage. The wharf company has paid dividends each year for 40 years; during that time they have averaged 4.34 per cent; during the last five years the dividends have been 5 per cent. In addition the earnings have been sufficient to enable it to add to its property and to make improvements to the extent of about $2,000,000. They have also been sufficient to enable it to set up a liberal sinking fund to meet its bonded indebtedness at maturity. It appears, therefore, that the investment must be regarded as a satisfactory one. Apart, however, from these financial considerations, and dealing with the transportation service that it performs over tracks that occupy only a portion of the property, the claim that $1.75 a car is not an adequate remuneration is not sustained by the record. That charge is consistent with the charges for switching and terminal service at other points in Texas, and under the general conditions shown of record must be regarded as reasonable. It follows that the higher charges proposed under its tariff No. 2 are unreasonable, and we so find.

The terminal company is also contending here for increases in the divisions allowed to it by the carriers. It is not altogether clear that we have jurisdiction to deal with divisions under a rate not fixed by the Commission; but without passing on that question, the record does not leave us under the impression that there is any merit in this contention.

There is the further claim by the wharf company that the carriers are discriminating against it in the larger divisions accorded to the Texas City Terminal Company, and in this we think there is some force. In this connection there is a good deal of testimony tending to

show the differences in the extent of the service performed by the wharf company and terminal company. At Galveston the carriers arrange the inbound cars in pier lots in their own yards and set them in that order in the yards of the wharf company. At Texas City this classifying of cars for convenient switching to its several piers is done by the terminal company. The average inbound haul of the wharf company to its piers is said to be about 0.88 mile; at Texas City the haul is 6 miles from one junction and 4 miles from another. At Galveston the wharf company has an outbound haul of about 3 miles to the yards of the connecting carriers. The switching service of the terminal company is therefore somewhat more extensive than the service of the wharf company at Galveston, but it is pointed out that the value of the property used in this service at Galveston is much greater than the value of the property so used at Texas City. The divisions of the terminal company include the loading and unloading charges. The switching charge of $1.75 of the wharf company does not include that service, but an additional charge is provided therefor under its tariff No. 1. Except on articles carried under commodity rates, on which carload minima are provided, a comparison of charges of the wharf and terminal companies is somewhat difficult. The record on the point is not as clear as it might be and gives us no satisfactory basis for an order. All things considered, however, we find that the terminal company is enjoying a preference in its divisions of the through rates, and that there should be a readjustment. With that end in view we shall expect the carriers to go into conference with the two wharf companies and promptly submit for our examination a new schedule of divisions with the terminal company. No conditions are shown of record to justify the carriers in giving any advantage to the terminal company except such as will fairly measure the greater service that it may be said to perform.

It was said at the hearing and repeated on the argument that doubt was entertained as to the jurisdiction of the Commission over traffic moving from a point within the state of Texas to those two ports for export, and some expression of our view is desired on that point. We think the point is fully covered by what has been said by the Supreme Court of the United States in *Southern Pacific Terminal Co.* v. *I. C. C.*, 219 U. S., 498, 527:

It makes no difference, therefore, that the shipments of the products were not made on through bills of lading or whether their initial point was Galveston or some other place in Texas. They were all destined for export, and by their delivery to the Galveston, Harrisburg & San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the Terminal Company becoming a part of the railway for such purpose. The case, therefore, comes under *Coe* v. *Errol*, 116 U. S., 517,

where it is said that goods are in interstate, and necessarily as well in foreign. commerce when they have "actually started in the course of transportation to another state, or delivered to a carrier for transportation."

This has always been the view of the Commission. *In the Matter of Rates., etc., with Respect to the Transportation of Sugar*, 22 I. C. C., 558. We understand also that the supreme court of Texas has recently disclaimed any jurisdiction over traffic moving to the ports of that state for export. If the question was ever one of real doubt it seems, therefore, now to be fully settled.

In accordance with the conclusions herein announced, the Galveston Wharf Company will be expected to withdraw its tariff No. 2 and the Galveston Bay lines will be expected to cancel their tariffs withdrawing the absorption by them of the loading and unloading charges on certain commodities. The trunk lines will also be expected to restore the 51-cent rate to Texas City, thus giving the Texas City interests full opportunity to carry out their policy of maintaining a free wharf. We shall also expect the parties in interest to confer with respect to the readjustment of the divisions of the Texas City Terminal Company and promptly to lay before us a schedule of new divisions in compliance with what is here said. If it shall prove to be necessary an order will be entered by the Commission fixing the divisions at Texas City and otherwise giving effect to the conclusions that we have reached.

INVESTIGATION AND SUSPENSION DOCKET NO. 11.

THE TAP LINE CASE.

Decided May 14, 1912.

Following the original report herein, *ante*, page 277, the remaining tap lines shown of record are considered and conclusions announced. Comments are also made respecting certain irregularities and defects in practices and tariffs.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

In the original report herein (*ante*, page 277), after stating the history of the several tap lines there mentioned and setting forth the salient features in connection with their ownership, physical condition, general character, source of traffic and revenue, and the manner in which their operations for the proprietary company are conducted, we found that in none of the cases there disposed of did the tap line perform a service of transportation either in the movement of the products of the mill of the proprietary company or in the movement of its logs from the forest to its mill. We held that the service in each case, so far as the logs and lumber of the proprietary company are concerned, was a plant service. It was also said at the close of the report that in a supplemental opinion, to be announced in the near future, we would state the facts in relation to all the other tap lines whose affairs are disclosed in the record before us, pointing out from among them such as in the judgment of the Commission bear a different relation to their respective proprietary lumber companies; and that in connection with the supplemental report we would enter such order with respect to all the tap lines before us as the conclusions announced might require.

Many of the tap lines described in this report differ only in detail from the lines described in the original report and consequently are controlled by the same principles. At the conclusion of the statement in each case we have noted a finding to which effect will be given in the order to be entered. It seems well, however, before describing the remaining tap lines of record, to call attention to a practice that finds frequent illustration in the pages that follow.

In a number of cases the tap line without charge hauls the logs of the lumber company that owns it. In other cases the lumber company itself hauls its logs over the tap-line rails to its mill. In some instances its right to do this is evidenced by a formal trackage contract; in other instances it is done under a verbal understanding. In some cases no charge is entered up by the tap line against the lumber company for this use of its tracks, and in a few cases the lumber company pays a small compensation. In several instances the trunk lines themselves have given trackage rights for a small toll to lumber companies. We have not understood that special privileges of this kind may lawfully be granted to a shipper. It is not uncommon for one railroad to give the use of its rails to another railroad under a trackage agreement, but we see no way in which a shipper may enjoy such a privilege over the rails of a common carrier, particularly when the compensation for the privilege is not published and the privilege is not open equally to other shippers. Except in one or two cases where the tap line crosses the state boundary line such arrangements are possibly to be regarded as purely local and therefore beyond our control. But they are inherently unlawful, and afford strong evidence that a tap line whose rails are used in that manner by its proprietary lumber company is a mere plant facility. On the other hand, such an arrangement with a shipper, even though it be purely local and therefore beyond our control, may nevertheless operate as a rebate and be punishable as such under this law when it appears that the concession is made in order to secure the interstate traffic of the shipper. All such arrangements are wrongful and we shall expect them to be discontinued. It may be well again to say that in the disposition made of these cases we have had in mind the special conditions that exist in this territory and have taken such action as under all the circumstances developed seemed necessary in the prevention of unlawful discriminations and preferences. Doubtless the same or generally similar conditions exist in other extensive lumber-producing districts and may be duplicated elsewhere in connection with different classes of traffic. But it is obvious that matters of this nature can not be dealt with in a wholesale manner, but must be considered separately and in the light of the surrounding conditions and special facts. It will, therefore, be fully understood that all that is here said is intended to relate specifically to the conditions found to exist in this territory.

MISSOURI & LOUISIANA RAILROAD.

The entire capital stock of the Missouri & Louisiana Railroad Company, amounting to $150,000, is held by trustees for the Central Coal

& Coke Company; and the two companies have the same officers. The tap line is composed of four separate properties, one in the state of Missouri and one in Arkansas, are operated as facilities of the coal mines of the proprietary company. Inasmuch as the record relates only to lumbering conditions, we shall confine our discussion of this tap line to the other two so-called divisions, which are situated in the state of Louisiana and are used as facilities in the lumbering operations of the proprietary company.

The track known as the Carson division connects with the Kansas City Southern at Carson, where the Central Coal & Coke Company, which we shall hereinafter refer to as the lumber company, has a mill. From that point it extends westward and northward for about 7 miles to a connection with the Santa Fe at Pujo. The line also extends eastward from Carson for about 3 miles to a connection with the Lake Charles & Northern. There is also a 4-mile branch extending from the main track to a connection with the Santa Fe at Hall City. The aggregate length of the tracks composing what is known as the Carson division is about 14 miles. They are not owned by the tap line, but are operated by it under a verbal arrangement with the Central Coal & Coke Company, which constructed the tracks and has retained title to the right of way. The tap line owns two locomotives, but no other equipment. The logging cars belong to the lumber company, which also owns one locomotive and uses one of the locomotives that is owned by the tap line. The switching of the logging cars in the woods is done by the lumber company, using the two locomotives already referred to, but the logs are hauled from the assembling track to the mill by the tap line, which enters up a charge for that service of $3 per car against the lumber company. The tap line switches the carloads of lumber from the mill for a distance of less than 2,000 feet to the Kansas City Southern, or moves them nearly 4 miles to the Lake Charles & Northern, or 7 miles to the Santa Fe. The bulk of the traffic actually moves out over the Kansas City Southern, which makes an allowance out of the published rates of from a fraction of a cent to 3 cents per 100 pounds. Practically the same divisions are paid by the Lake Charles & Northern, but no allowances are accorded by the Santa Fe. The traffic on the Carson division for the year 1910 aggregated 269,991 tons, on which the allowances received from the trunk lines aggregated $14,390.10, while the charge entered up against the lumber company for the log haul amounted to $29,319. Apparently the logging trains are run on an irregular schedule. If there is any outside traffic it is insignificant, and the record does not indicate that any fares are collected from such passengers as may be carried on the engine.

The tap line in its relation to the proprietary lumber company and the traffic of this mill is purely a plant facility. For the movement of the lumber from the mill to the Kansas City Southern, if performed under the conditions referred to in our original report, the lumber company may receive nothing beyond a reasonable allowance under section 15.

The so-called Neame division connects with the Kansas City Southern at Neame, La., and runs westward for a distance of 5 miles to Rand. It is owned by the Central Coal & Coke Company, but is operated by the Missouri & Louisiana Railroad under a verbal arrangement. The lumber company itself operates several miles of logging spurs, moving the logs to the connection with the main stem from which they are taken to the mill at Neame by the tap line. Here again a charge of $3 per car is made against the lumber company for the log movement. The mill, however, is on the tracks of the Kansas City Southern, which spots the empty cars and removes them when loaded. An allowance of from a fraction of a cent to 3 cents per 100 pounds is made out of the published rates. The tap line owns two locomotives, one of which is used by the lumber company on the spurs, in addition to a locomotive which the lumber company itself owns. The only cars in service are logging cars, which are owned by the lumber company. The traffic on this section for the year 1910 aggregated 185,142 tons, on which the Kansas City Southern paid allowances amounting to $16,174.82, while the lumber company, for the hauling of the logs to the mill, was charged $17,148. There is no other mill or industry served by this track, and the record does not indicate the movement of any freight in which the proprietary company was not directly interested.

It is clear that this part of the tap line is purely a plant facility, and the allowances heretofore made by the Kansas City Southern have operated as a fraud upon the law. No allowances may be made in the future either to the lumber company or the tap line.

SAGINAW & OUACHITA RIVER RAILROAD.

The mill of the Saginaw Lumber Company is on the east bank of the Ouachita River, about two and one-half miles from the line of the Iron Mountain system, which it reaches with its manufactured lumber by means of its incorporated tap line, known as the Saginaw & Ouachita River Railroad Company. The line was constructed some 15 years ago, but was not separately incorporated until 1905, when capital stock of the railroad corporation to the amount of $25,000 was issued to the lumber company in exchange for the railroad property. They constitute one general investment. Near the mill is a town known as Saginaw, with about 250 inhabitants, being largely the employees of the lumber company and their families. The only

store is one conducted by the lumber company. There are a few farms so close to the Iron Mountain that they usually haul their products to that system for transportation. The only industry other than the Saginaw Lumber Company that is served by the tap line is a small mill near Saginaw, which manufactures furniture stock. It will therefore be seen that it has very little traffic in which the lumber company has not a direct interest; the record, in fact, shows that approximately 99 per cent of it is furnished by the lumber company. While it carries passengers, the revenues from that source during the fiscal year 1910 were but $329.85, or less than $1 a day. The larger part of this small revenue, we can not doubt, was paid by employees of the lumber company.

The lumber company has an unincorporated logging road which extends from a point on the west bank of the river, opposite the mill, for a distance of about 12 miles into the timber. The logs are brought over this road to the river and floated across to the mill. For the movement of the lumber from the mill to the Iron Mountain, a distance of 2½ miles, the tap line receives an allowance of 3 and 4 cents per 100 pounds out of the joint rates, which are the same from the mill at Saginaw as from the Iron Mountain junction point. The claim is that this division is not intended to and does not in fact cover the movement of the logs into the mill.

The road is apparently operated at a substantial profit, the operating revenues for the year 1910 being $7,915.47, with operating expenses aggregating but $5,726.21. In the year 1910 it declared a dividend of $6,282.32, partly out of surplus.

The equipment consists of one locomotive and a caboose, which is used for passengers, l. c. l. freight, and the mail. The necessary cars for shipments of lumber are furnished by the Iron Mountain. There are no station facilities. The employees consist of one train crew and two or three trackmen. The officers of the lumber company are officers also of the tap line and receive and use interstate passes. The clerks of the lumber company act as clerks for the tap line and the tap line credits the lumber company for their services.

Under the ruling in the original report in this proceeding the lumber rate extends from the mill, and the Iron Mountain, upon arranging with the lumber company to perform the service for it, would be entitled to make it a reasonable allowance under section 15. We find on the facts disclosed that the tap line comes within the category of cases outlined in the original report.

SALINE RIVER RAILWAY.

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The Saline River Railway Company was incorporated in 1897 and is controlled by the stockholders of the Saline River Lumber

Company, to which it is indebted in a sum exceeding $125,000, principally for money expended in changing the route and widening the track from narrow to standard gauge. The two companies are therefore identical in interest and have been from their inception; the property as an entirety was acquired by the present owners in 1907.

The Saline River Railway connects with the Cotton Belt at Draughon, Ark., where the sawmill and planing mill of the lumber company are situated, and extends southward to a point known as Glynn, Ark., where a connection is made with the tracks of the Warren & Ouachita Valley Railway, another tap line of which further mention will be made hereafter, by means of which it reaches the Rock Island. (See map, *post*, p. 556.) The tap line consists of about 19 miles of main track and less than 2 miles of sidings, with trackage rights over the Warren & Ouachita Valley to certain unincorporated logging spurs owned and operated for the Saline River Lumber Company. The equipment of the tap line consists of 3 locomotives, 1 combination passenger car, 35 logging cars, and 3 other cars. It has a small station building at New Edinburg, which is described of record as the only town on the line with the exception of Draughon. It has some stores and a bank, but is not shown as a community on the census reports of 1910. We understand, however, that there are about 200 inhabitants in the locality. It is about 9 miles from Draughon, and, until shortly before the hearing, was the terminus of the incorporated tap line. The country traversed by the tap line is largely cut over timber lands, with a few farms and one or two small portable sawmills.

The sawmill and planing mill of the lumber company at Draughon is served by a sidetrack owned jointly by the tap line and the trunk line. The Cotton Belt places the empty cars and switches the loaded cars of lumber from the mills. The tap line, on the other hand, hauls the logs from the loading point on the logging spurs in the woods direct to the mill, making a charge of $3 per car against the lumber company for the service on the unincorporated tracks. For the service of hauling the logs over the incorporated track the tap line receives from the trunk line a division of from 1 to 2½ cents per 100 pounds. About one-half of the lumber produced at the Draughon mill, however, is hauled by the tap line to Glynn, and thence by the Warren & Ouachita Valley to Banks, where it is received by the Rock Island, which allows a division of 5 cents per 100 pounds, of which 1½ cents is retained by the Warren & Ouachita Valley. The Rock Island makes the same rate as that published by the Cotton Belt, 3½ cents going to the

Saline River Railway Company. There is no other explanation of record for this back-haul movement of the lumber.

The Saline River Railway has two regular logging trains daily between Draughon and New Edinburg, on which it transports passengers and carries the mail. Its revenues from passenger traffic for the year 1910, however, were but $1,041. Its freight revenue for the same period was $20,019.19. A few carloads of staves and other forest products were handled for outside parties, and the total traffic in commodities other than forest products was 1,400 tons, of which 191 tons was outbound farm products and the remainder inbound shipments of supplies, merchandise, and material.

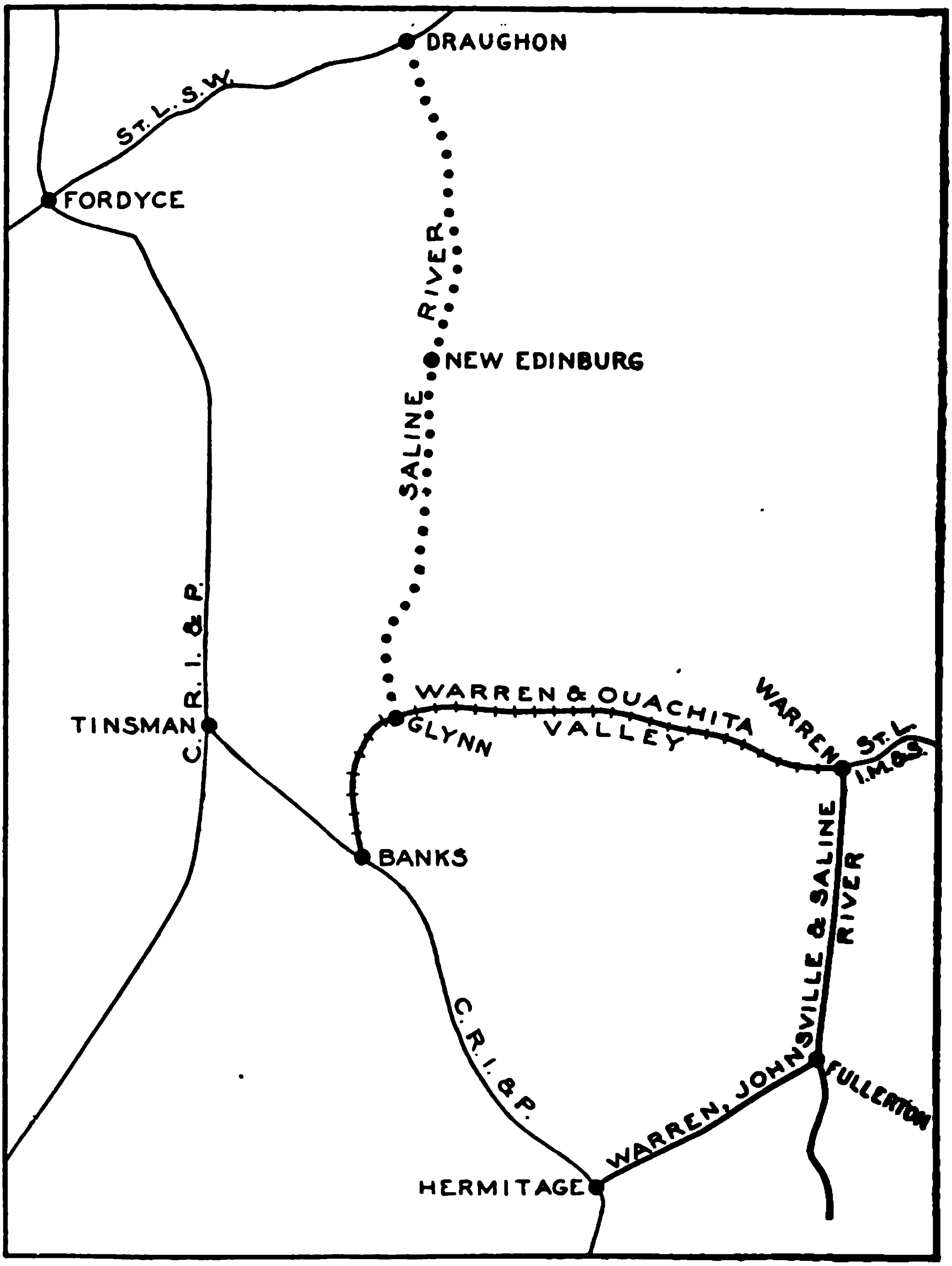
This is a typical case of a mill located immediately on one trunk line, but which is induced to back haul its lumber for a considerable distance to another trunk line in order to get the benefit of its higher allowances. The Cotton Belt extends its lumber rate to the mill and performs the service. There is no reason, therefore, why it should make an allowance to this tap line. The aggregate division out of the rate to the two tap lines for handling the lumber from the mill through Glynn and thence over the Warren & Ouachita to Banks may not lawfully exceed 2 cents per 100 pounds.

WARREN & OUACHITA VALLEY RAILWAY.

The Warren & Ouachita Valley Railway Company was incorporated in 1899 and has capital stock outstanding to the amount of $284,000. It is owned by the stockholders of the Arkansas Lumber Company and the Southern Lumber Company, both of which have mills on its line. There is no bonded or other indebtedness. The officers of the tap line are officers also of one or the other of the lumber companies. The record does not indicate whether there is any intercorporate or other relation between the lumber companies.

The tap line connects with the Iron Mountain at Warren, Arkansas, and extends westward for a distance of about 16 miles to Banks, Arkansas, where it meets the rails of the Rock Island. At Glynn, about 5 miles from Banks, a connection is made with the line of the Saline River Railway Company, as heretofore stated. The lumber companies jointly own an unincorporated logging road extending from a connection with the tap line for a distance of 10 or 12 miles into the timber. Each of the lumber companies also has private logging spurs connecting with the rails of the Rock Island. These unincorporated spur tracks are operated by the lumber companies themselves. In hauling their logs to the mills they have trackage rights over the line of the Rock Island for which they pay 75 cents per train-mile; they pay the tap line 15 cents per 1,000 feet of logs,

which is equivalent to about 50 or 60 cents per train-mile, for the privilege of operating log trains over the rails of the tap line to the mills from the junction with the Rock Island or from the junction of the unincorporated spurs with the tap line, as the case may be.



One of the mills is at a distance of 1½ miles and the other 2 miles from the connection with the Iron Mountain at Warren; they are therefore nearly 15 miles from the junction with the Rock Island. The line hauls the lumber from the mills to the Rock Island, on the

one hand, and switches the lumber to the Iron Mountain on the other, the tonnage being about equally divided between the two trunk lines. Out of the joint rates on lumber which are the same from points on the tap line as from stations on the trunk lines in this vicinity, an allowance is made of from 1 to 5 cents per 100 pounds.

The Warren & Ouachita Valley has three locomotives, two passenger coaches, six freight cars, and a caboose. Each of the lumber companies also owns and operates locomotives and logging cars. The tracks of the tap line are laid with 60-pound steel rails and are well ballasted, with permanent bridges. It has a station building at Warren and a telegraph and telephone system. It operates two trains daily each way and its revenue from passengers is said to exceed $1,000 per month. While more than 5,000 bales of cotton are raised along its line annually, most of this traffic is drayed by the farmers to the trunk lines. The total lumber tonnage for the fiscal year 1910 was 53,830 tons, of which about 7,500 tons was moved for small independent mills on or near its line. More than 90 per cent of its entire traffic and revenue is supplied by the lumber companies in whose interest it is operated. In this percentage is not included the log movement over the tap line performed by the lumber companies themselves. Including this large tonnage the percentage of outside traffic would be comparatively insignificant. In the outside traffic is included the lumber received from the Saline River Railway, amounting to something like 20 carloads per month.

The record indicates that the Warren & Ouachita Valley is a profitable investment, and this is confirmed by the annual reports made to the Commission. Its total revenue for the fiscal year 1910 was $83,496.09, and its net operating revenue $21,140.35. It paid during that year a dividend of $28,400, partly out of surplus, leaving a surplus at the end of the year of $3,502.93, having paid during the previous three years dividends aggregating 50 per cent on its capital of $284,000.

In this case the controlling lumber companies not only have trackage rights for hauling their own logs over their own tap line to their mills, but have trackage rights for the same purpose over the Rock Island. This we regard as unlawful. We do not understand that shippers may move their property over the rails of common carriers except under lawfully published tariff provisions open to all shippers. As a part of the contract giving its use in that manner to the lumber companies the Rock Island requires them to route half of the products of their mills to its line. The arrangement apparently was a concession to the lumber companies for their traffic.

The mills of the controlling companies at Warren are respectively 1 and 1½ miles from the Iron Mountain rails. We think that the

Iron Mountain may pay this tap line nothing in excess of a reasonable switching rate, which we fix at $2.50 per car, and that the Rock Island may make a division out of the rate from these mills not exceeding 2 cents per 100 pounds.

WARREN, JOHNSVILLE & SALINE RIVER RAILROAD.

The entire stock of the Warren, Johnsville & Saline River Railroad Company, of which $50,000 has been issued, is owned by the stockholders of the Bradley Lumber Company, a subsidiary corporation of the Chicago Lumber & Coal Company. Its outstanding bonds to the amount of $200,000 also are apparently held by the lumber company or its stockholders.

The tap line connects with the Iron Mountain at Warren, Ark., and with the Rock Island at Hermitage, the main track being about 15 miles in length. The statement on the record is that it has 1.13 miles of yard tracks and sidings, but the annual report to the Commission for the fiscal year 1910 shows over 10 miles of branch lines and spurs. The latter figure doubtless includes the tracks aggregating some 5 miles in length that are described on the record as private logging spurs owned by the lumber company. The equipment of the tap line consists of 3 locomotives, 1 caboose, and 50 logging cars. A time table is published which shows one "mixed train" moving daily on regular schedule; but it is explained that this schedule was issued in compliance with the regulations of the Arkansas commission, and that in fact there is no regular train movement. A few passengers are carried in the caboose without any charge. The tap line has three train crews and two gangs of trackmen, one of which is employed in maintaining the logging spurs.

The mill of the lumber company is at the junction with the Iron Mountain in Warren. In 1902 six miles of logging track were built by the lumber company from the mill into the timber, and subsequently an additional 4 miles were laid. When the tap line was incorporated, in 1905, the track then in operation was turned over to it, and an additional 4 miles was built to the connection with the Rock Island. A contract, to which the proprietary lumber company was a party, was entered into providing for the payment of allowances by the Rock Island to the tap line, and the delivery to the Rock Island of not less than 50 per cent of the output of the mill. The divisions thus received range from 1½ to 5 cents per 100 pounds, the maximum amount being paid on the major portion of the traffic. Apparently the same allowances are made by the Iron Mountain, which actually receives nearly one-half the traffic. There are also some joint class and commodity rates published in connection with the Rock Island to interstate points.

The tap line hauls the logs from the point where they are loaded on the cars to the mill, charging the lumber company $6 per car in addition to the actual expense of maintaining and operating the logging spurs heretofore referred to. Apparently there is no arrangement by which this charge or part of it is subsequently refunded or written off the books by the tap line, but the record is not entirely clear in this regard. The empty and loaded cars for the shipments of manufactured lumber are switched by the tap line to the interchange track with the Iron Mountain, a distance of about $\frac{3}{4}$ mile, or are hauled from and to the junction with the Rock Island, a distance of nearly 15 miles. (See map *ante*, p. 556.)

The country through which the tap line runs is a wilderness, the only towns being Warren and Hermitage, the respective junction points with the trunk lines. There is very little traffic except that supplied by the lumber company, although it is stated that there are one or two short spurs used by independent producers of staves, bolts, and ties, and there is an occasional movement of fertilizer or cottonseed. The annual report for the fiscal year 1910 shows but 1,539 tons of miscellaneous freight inbound and outbound out of a total movement of 170,527 tons, of which 2,120 tons was coal and 166,868 tons was forest products.

The tap line formerly enjoyed trackage rights over the Rock Island for the movement of logs, which were apparently being cut by the lumber company at points along that trunk line. The charge was 75 cents per train-mile, but the arrangement was discontinued in June, 1910.

This tap line, we find, belongs to the class of tap lines described in the original report herein. Its proprietary lumber company would be entitled to a reasonable allowance for switching its lumber to the Iron Mountain under the conditions there outlined.

EL DORADO & WESSON RAILWAY.

In 1904 the Edgar Lumber Company purchased a small mill at Wesson, Ark., which delivered its manufactured product to the Arkansas Southern Railroad, a subsidary line of the Rock Island system, by means of a branch or spur track about 5 miles in length, owned by the Arkansas Southern but operated by the lumber company. This track joined the Arkansas Southern at a point known as Cornie Junction and was built of steel weighing only 20 and 30 pounds to the yard, the individual rails being from 6 inches to 30 feet in length. The capacity of the mill was increased, and its owners incorporated the El Dorado & Wesson Railway Company and built a track from the mill northward for about 10 miles to El Dorado, where a connection is had with the Rock Island and the Iron

Mountain. Before the tap line was built a contract was entered into with the Rock Island, which, in addition to providing for allowances to the tap line out of the joint rates on the one hand, and the delivery of the majority of its tonnage to the Rock Island on the other hand, contemplated that the Rock Island would contribute not to exceed $100,000 toward the construction of the tap line. As a matter of fact, its contributions aggregated $112,000, for which it demanded no note or other evidence of indebtedness from the lumber company or tap line. This amount had been repaid to the Rock Island at the date of the hearing, with the exception of about $50,000. It was repaid in the sense that the Rock Island had retained its divisions to the aggregate of about $75,000 on the outbound product of the lumber company. These divisions range from 1½ to 5 cents per 100 pounds and average more than 4 cents. The contract provided for the repayment of the sum advanced by the Rock Island within a period of four years, but this has been wholly disregarded by the parties to it. Here, then, is a case where a lumber company acquires property of large value by an allowance made to it out of the rate on its traffic. The tap line claims to have expended $50,000 for equipment. The record shows, however, that the equipment was purchased by the lumber company and turned over to the tap line in exchange for its capital stock to that amount. This is its only outstanding stock.

The equipment of the tap line consists of 1 locomotive, 1 passenger coach, 1 baggage car, 4 box and 3 flat cars. It runs one mixed train daily in each direction, on which passengers and the mail are carried. The revenue from its passenger service for the fiscal year 1910, as reported to the Commission, was $5,523.67, and a slightly less amount for the year 1911. Its total traffic for the year 1910 was 40,487 tons and its revenue thereon $37,608.28, as reported to the Commission. Of this tonnage 36,433 tons is stated of record as the weight of the lumber forwarded by the Edgar Lumber Company. The traffic in farm products and supplies for settlers is small, although the country through which it runs is said to have been occupied as a farming community before the Civil War. El Dorado, the junction point with the trunk lines, is the county seat and has a population of 7,000. Wesson is apparently a mill town with about 800 inhabitants. There is a small cotton gin at Wesson and three or four merchants.

The lumber company owns an unincorporated logging track which is operated under the name of Cornie Valley Railroad, 12 to 15 miles being described as main line and the remaining 10 or 12 miles as spurs. This track extends westward from the mill into the timber. It is not so well built as the incorporated tap line and has some grades as high as 8 per cent. In the operation of the Cornie Valley railroad the lumber company uses 4 locomotives, 3 flat cars, 2 box cars,

and 75 logging cars, with which it hauls the logs to the mill. It appears that there is another small mill and some settlers in the vicinity of the Cornie Valley and that their freight is hauled to Wesson in about the same way that the El Dorado & Wesson hauls traffic for settlers along its lines, but the Cornie Valley claims not to hold itself out as a common carrier. It appears, however, that occasional carloads of staves are loaded along the Cornie Valley, and that its charge, amounting to about $10 per car, is shown on the waybill as advances and collected from the consignee at Memphis or other destination. It is said that construction has begun on an extension of the El Dorado & Wesson southward to Homer, La., and that the citizens of that town, which is already served by the Louisiana & Northwest, have voted a tax. We infer from the record that the lumber company owns or proposes to acquire timber holdings in that direction.

In this case we fix the maximum division that this tap line may lawfully receive out of the rate at 2 cents per 100 pounds.

THORNTON & ALEXANDRIA RAILWAY.

The mill of the Stout Lumber Company is within a few feet of the line of the Cotton Belt in the town of Thornton, Ark., and has been in operation for about 25 years. The lumber company was formerly known as the Stout-Greer Lumber Company, and some 15 years ago built 18 miles of narrow-gauge track for the purpose of bringing in logs to the mill. In 1904 the Thornton & Alexandria Railway Company was incorporated; the lumber company declared a dividend to its stockholders payable in stock in the new corporation, to which it turned over the tracks and equipment. The line was then changed to standard gauge, the money for that purpose being furnished, apparently, by the lumber company, to which the tap line is now indebted in a sum exceeding $80,000. The two companies are a part of the same general investment.

The tap line connects with the Cotton Belt at Thornton and runs in a southerly direction to Hampton, which is the county seat. The lumber company has about 5 miles of unincorporated logging tracks which connect with the tap line at Hampton. The tap line has 4 locomotives, 1 combination passenger car, 1 caboose, 9 freight cars, and 50 logging cars.

The lumber company owns about 70,000 acres of timberland, of which something over 20,000 acres have been cut over; the remaining timber will be exhausted at the present rate of cut in about 30 years. The tap line hauls the cars from the point where they are loaded, on the private logging spurs of the lumber company, through Hampton and over its own tracks to the mill, charging the lumber company

$1.25 per 1,000 feet, log scale, for the service performed on the spurs. The manufactured lumber is loaded into cars standing on the tracks of the Cotton Belt. The tap line receives from the Cotton Belt a division on yellow-pine lumber of from 1 to 2½ cents per 100 pounds, the joint rate being the same as the Cotton Belt's rate from the junction point. There are no joint rates on hardwood lumber, although there are said to be a number of independent shippers of staves, bolts, and heading; those shippers pay the tap line a local charge of 5 cents per 100 pounds in addition to the rates of the Cotton Belt. The tap line also has some joint class and commodity rates out of which it receives a division of 15 per cent. The total traffic for the year ending June 30, 1910, as shown on its report to the Commission, was 63,372 tons, of which 3,367 tons was miscellaneous freight and the rest lumber and other forest products. It is said that there are a number of farmers and producers of freight in the country traversed by the tap line; and the town of Hampton is said to have a population of nearly 1,000, with some 19 stores. About 95 per cent of the entire tonnage is supplied by the controlling lumber company. The tap line runs one logging train daily in each direction, carrying passengers and the mail. Its revenue from passengers for the year 1910 aggregated $2,648.96, and its earnings from mail and express $1,396.83, its entire operating revenue for the year being $42,995.92.

This tap line performs no service on the products of the proprietary lumber company moving out over the Cotton Belt; its haul of the logs to the mill we hold to be a plant service. We are now advised that a connection has been made with the Rock Island at Tinsman. If lumber from the mill moves through that junction the Rock Island may pay a division out of the rate not exceeding 1 cent per 100 pounds.

DONIPHAN, KENSETT & SEARCY RAILWAY.

The sawmill of the Doniphan Lumber Company is at Doniphan, Ark., at the northern end of its tap line, known as the Doniphan, Kensett & Searcy, which connects with the Iron Mountain 1½ miles to the south at a point known as Kensett. The lumber company and the tap line are identical in interest, their stock being held by the same individuals. The tap line is also indebted to the lumber company in a sum exceeding $35,000. The track from Doniphan to Kensett was constructed in 1906, when the mill was erected, the steel being leased from the Iron Mountain. Doniphan is a mill town with about 75 houses belonging to the lumber company; and the track from Doniphan to Kensett is used exclusively for the traffic of the lumber company and its employees.

In 1907 about 5 miles of track was constructed from Kensett westward to Searcy, a county seat with a population of about 3,000,

where a connection was effected with the Rock Island lines and the Missouri & North Arkansas Railroad. Although this track is used chiefly for the movement of logs for the lumber company, there is some outside traffic over it; and it runs parallel to the line of the Missouri & North Arkansas. It appears that there was formerly a line from Kensett to Searcy operated by mule power, and known as the Merchants Transportation Company, by means of which freight was transferred from the Iron Mountain to the town of Searcy; but this mule line was abandoned when the Doniphan, Kensett & Searcy was opened for operation. The Missouri & North Arkansas was afterwards built in through Searcy to Kensett and beyond, and the tap line enjoys trackage rights over it for a considerable distance northward from Searcy to the timber of the Doniphan Lumber Company. Utilizing this trackage right, for which a wheelage charge of $1 per train-mile is apparently paid, the tap line hauls the logs to Searcy, and thence over its own rails through Kensett to the mill at Doniphan. For this movement it charges the lumber company 2 cents per 100 pounds. When the lumber is shipped out the tap line switches the cars to the Iron Mountain at Kensett, a distance of 1½ miles, or removes them 6 miles to Searcy, where they are delivered to the Rock Island. In either case it receives a division of 3 or 4 cents per 100 pounds out of the joint rates. It also participates in through class rates to certain destinations, including Memphis and St. Louis, out of which it is allowed by the trunk lines 20 per cent or 25 per cent as a division. It does not carry passengers. More than 85 per cent of the whole traffic of the tap line for the fiscal year 1910 was supplied by the lumber company. While the country through which the tap line passes has largely been cleared of timber, the forest of the lumber company being located along the Missouri & North Arkansas as heretofore stated, the agricultural products handled by the tap line for the year 1910 aggregated only 662 tons.

The equipment of the tap line consists of 2 locomotives, 21 flat cars, and 2 cabooses, all having safety appliances. The lumber company has neither rolling stock nor unincorporated logging spurs, at least in the vicinity of the tap line. The employees of the tap line include two train crews, one section gang, two station agents, and two general officers. The officers and the agent at Doniphan are jointly employed by the tap line and the lumber company. Through bills of lading and through waybills for the movement of lumber are issued by the agent of the tap line at Doniphan. While apparently no dividends have been paid, there was a surplus on June 30, 1910, of $14,265.14, indicating that the operation of the tap line under its allowances has been a profitable one.

For its service in switching to or from the mill, a distance of 1½ miles, to the Iron Mountain at Kensett, the latter may allow this tap line a switching charge of $2.50 a car; for its service in switching the products of the controlling mill through Kensett, a distance of 6 miles, to the Rock Island at Searcy, the latter may allow the Doniphan, Kensett & Searcy a division out of the rate of 1 cent per 100 pounds.

FOURCHE RIVER VALLEY & INDIAN TERRITORY RAILWAY.

The Fourche River Valley & Indian Territory Railway Company and the Fourche River Lumber Company are identical in interest. The mill is at a company town known as Graytown, less than a mile from the line of the Rock Island, and was erected in 1903. Before the machinery was installed a track was built from a point on the Rock Island then known as Esau, but now in the town of Bigelow. When the mill was opened this track was extended south and west for the purpose of reaching the timber, and in August, 1905, when the railroad corporation was formed, was about 9 miles in length. There is some obscurity in the record, but apparently the track was operated previous to 1905 in the name of the Arkansas River & Southern Railway, which purported to be a common carrier. When the Fourche River Valley & Indian Territory was incorporated, capital stock to the amount of $220,000 was issued in exchange for the equipment and tracks then laid and in operation. Subsequently an additional 6 miles was constructed at an expense of about $80,000, and bonds were issued to the lumber company therefor in the sum of $100,000. The tap line, as described of record, is standard gauge, laid with 56-pound steel and having substantial bridges. It extends from Bigelow, a town on the Rock Island, to Bellevue, a distance of 15 miles, with about 2 miles of side track. At a switch known as Wye, about 9 miles from Bigelow, unincorporated logging tracks connect with the tap line and reach out into the woods. The tap line has 1 locomotive, 1 combination passenger and baggage car, 1 tank car, and 61 freight and logging cars. The lumber company itself owns two locomotives, which it operates on the logging tracks. The tap line has a two-story building at Graytown, used as a station and office, with small sheds and a loading platform at one or two other points. It apparently uses the Rock Island station at Bigelow, and it weighs carload shipments on the lumber company's track scale at Graytown.

The logs are loaded by the employees of the lumber company on the unincorporated tracks and are taken by the tap line from Wye to the mill; a charge of 2 cents per 100 pounds is made for this service. The manufactured product is subsequently moved by the tap

line from the mill to the Rock Island, less than a mile away. The Rock Island allows out of the joint rates, which are the same from the mill at Graytown as from the junction, a division of from 2 to 3 cents per 100 pounds.

The tap line operates two logging trains daily in each direction with a coach, but its passenger revenues for the fiscal year 1910 were only $1,100. Its principal tonnage is forest products, amounting for the year 1910 to 142,359 tons, of which 31,176 tons was lumber. It moved during the same period 3,825 tons of miscellaneous freight, including nearly 2,000 tons of coal. The record indicates that 6,082 tons of freight moving outbound and 448 tons moving inbound were furnished by others than the proprietary company, or an aggregate of about 5 per cent of its traffic. It does not participate in through rates on articles other than forest products, and its local charges on merchandise are not filed with the Commission. The joint rates on lumber, staves, etc., from points west of the mill at Graytown are 1 cent per 100 pounds higher than the rates from the mill; and the allowance made to the tap line on movements from west of Graytown are increased by that amount. There are said to be two or three small mills in the vicinity that team their lumber to the tap line. The Neimeyer Lumber Company has extensive timber holdings in the vicinity of the Fourche River Valley tap line, but it has a tap line of its own, known as the Little Rock, Maumelle & Western, reaching that timber. An effort is being made to colonize the cut-over lands and new settlers are coming in. It is hoped that it will develop into a farming country.

The operations of the tap line have been unusually profitable, and it has paid dividends aggregating more than $100,000. The assets on June 30, 1910, amounted to $341,000, including a surplus of $17,000 remaining after the payment during that year of a 16 per cent dividend amounting to $35,200.

On August 9, 1904, a contract was entered into by the Rock Island lines with the Arkansas River & Southern Railroad, and this has been assigned to the Fourche River Valley & Indian Territory. It provides for the payment of divisions to the tap line, and requires that not less than 50 per cent of its traffic shall be given to the Rock Island.

In this case the Rock Island may lawfully allow the tap line a switching charge of $1.50 for moving the products of the controlling mill at Graytown to the junction point, a distance of nearly 1 mile.

BLYTHEVILLE, LEACHVILLE & ARKANSAS SOUTHERN RAILROAD.

The precise relation between the Blytheville, Leachville & Arkansas Southern Railroad Company and the Chicago Mill & Lumber

Company is not disclosed of record; but there is a community of interest which amounts to a domination, if not full ownership of the tap line by the lumber company. Moreover, the tap line is operated primarily as a facility for bringing logs to the mill of the lumber company, which is in the vicinity of Blytheville, Ark., at a point known as Glenco, and has a capacity of 75,000 feet per day. The rails of the Jonesboro, Lake City & Eastern extend through the plant inclosure.

The Blytheville, Leachville & Arkansas Southern Railroad Company is described on the brief as operating 52 miles of road, extending from Blytheville, Ark., through Arbyrd, Mo., to Shaw, Ark. Its annual report for the year 1910, however, shows an aggregate of 7 miles of track owned; and the report for 1911 shows 19.11 miles, all in the state of Arkansas. It, in fact, owns and operates a main track running northward from a point in the timber, known as Shaw, for about 17 miles to Leachville. This track was constructed on a survey made for a proposed extension of the Frisco, which terminates at Leachville, where it meets the east and west lines of the Jonesboro, Lake City & Eastern. From Leachville the tap line enjoys trackage rights over the Frisco, crossing the state line into Missouri, a distance of 8 miles, to Arbyrd. From Arbyrd it has trackage rights eastward over the Paragould Southeastern Railway, a part of the Cotton Belt Route, for 22 miles, again crossing the state line to Chickasawba. From that point it has tracks extending to the mill at Glenco and to connections with the Jonesboro, Lake City & Eastern and Frisco railroads at Littleton and Blytheville. The length of these tracks aggregates 2¼ miles. It therefore will be seen that the tap line owns two sections of track, one reaching the timber south of Leachville and the other in the vicinity of the mill; and that these tracks are connected by means of running rights over the trunk lines. There is a three-party contract between the tap line, the Frisco, and the Paragould Southeastern which restricts the trackage privilege to the operation of freight trains on which the tap line transports no freight "except that which originates on its own rails and is destined to points on its own rails." The agreement names a wheelage charge of 50 cents per train-mile, in addition to which it provides for the payment to the trunk lines of 95 per cent of the gross charges earned by the tap line on all freight hauled over the tracks in question except logs and other forest products in the rough. The plain intention of the contract, therefore, seems to be to restrict the trackage rights enjoyed by the tap line to the movement of forest products.

The tap line was incorporated in May, 1908, and took over tracks built and owned by the Chicago Mill & Lumber Company in the

vicinity of Glenco and 5 miles of track extending south from Leachville. It also acquired from the lumber company 10 miles of track and right of way extending south and west from a point called Big Lake on the Jonesboro, Lake City & Eastern. This track was promptly abandoned and the rails used in extending the line south of Leachville, the lumber company exchanging 10 miles of new right of way south of Leachville for the 10 miles south of Big Lake.

It is said that an extension of the tap line is contemplated southward to Truman, a point on the Frisco's line from Memphis to Kansas City, where a large veneer and sawmill plant is under construction, which is expected to furnish a considerable tonnage moving to Cairo. Other large claims are made of outside traffic now existing or in future prospect. It is admitted, however, that during the 10 months ending October 31, 1910, 96.6 per cent of the entire tonnage of the tap line was furnished by the Chicago Mill & Lumber Company. On the brief it is claimed that during a later period the outside tonnage increased 131 per cent; but this would indicate the traffic in which the lumber company had no interest as less than 10 per cent.

The equipment consists of 6 locomotives, one of which is out of service, 86 flat cars, 2 cabooses, 1 box and 2 coal cars. It has a track scale at the mill, and one of its employees is a sworn weighmaster of the weighing and inspection bureau. It has 3 train crews and 27 sectionmen. The only station building is a joint depot at Leachville. It operates a "passenger service" over the track from Leachville to Shaw, with "four trains daily" that meet the trains of the trunk lines; but its passenger earnings for the fiscal year 1911, as reported to the Commission, were but $1,181.37; its only passenger equipment shown of record is two cabooses. The miscellaneous freight shown on its report for that year as originating on its line was 462 tons of grain and hay and 132 tons of merchandise, and the only inbound traffic was 237 tons of bituminous coal. The volume of forest products for the same year aggregated 163,357 tons, of which 30,548 tons was lumber. There are said to be several independent lumber companies that have mills along the main track south of Leachville, but the traffic which they give the tap line is apparently inconsiderable, although not stated of record. It may be well to explain that this general territory is honeycombed with the tracks of tap lines already constructed or proposed to be extended.

Here we have another tap line owning two separate pieces of track widely separated, which are connected under trackage rights over trunk lines. One of the connecting carriers runs immediately through the mill plant, but makes no allowance to the tap line. The rights of way of the other two connecting carriers apparently lie about 2 miles from the mill, and they make the tap line an allowance of 2 cents per 100 pounds. We regard this as unlawful. As their

lumber rates extend to the mill they may under section 15 reasonably compensate the lumber company for switching the lumber to their lines, but only if the distance from the mill to the trunk line rails is in excess of 1,000 feet.

GOULD SOUTHWESTERN RAILWAY.

The record with respect to the Gould Southwestern Railway Company, and the lumber interests with which it is or has been affiliated, is far from satisfactory. The impression sought to be conveyed is that there is an entire absence of any community of interest between the tap line and any lumber company, but the facts appearing of record and disclosed by our own investigations by no means confirm any such assertion. The officers of the Gould Southwestern are officers of a large lumber manufacturing and selling company at Chicago. The record indicates that previous to 1906 a corporation known as the Estabrook Lumber Company operated a sawmill near Gould, Ark., which was sold or transferred in that year to the Newhouse Mill & Lumber Company. As a facility in the operation of the mill the vendees constructed about 5 miles of track extending southwestwardly from a point known as Bonner, crossing and connecting with the Iron Mountain at Gould, and terminating at another point known as Webber. This track was turned over to a corporation formed by the lumber company and known as the Gould Southwestern Railway Company, having a capital stock of $51,000, which was exchanged for the right of way and distributed among the stockholders of the lumber company. In addition to this stock the tap line is indebted to the lumber company for loans exceeding $100.000. The Newhouse Company, which apparently still controls the Gould Southwestern, claims to have gone out of the lumber business in this county, leasing its mill to one R. L. Muse, and selling its company store. It claims also to have disposed of most of its timber holdings in that vicinity to various parties having no relation to the lumber company or the tap line. In other words, the Newhouse Company is described on the record as in a state of liquidation, having permanently retired from the lumber business. There is nothing on the record to indicate that the product of the mill which the controlling company has leased to Muse is not marketed by the same interests that control the tap line; nor is there a definite statement indicating that the controlling interests do not have timber holdings that will be reached by proposed extensions of the tap line which are referred to on the record.

The track of the Gould Southwestern as in operation at the date of the hearing was laid from Bonner through Gould to Star City, a total distance of 17.6 miles. Its equipment consisted of two loco-

motives, a combination coach, and a wrecking outfit. It had no freight cars, using for such traffic as it was able to secure the cars furnished by the trunk line. There are two logging trains daily in each direction, operated on regular schedules and carrying from 800 to 1,000 passengers monthly. More than 90 per cent of its tonnage during the period prior to the hearing was forest products, the remainder being cotton, other agricultural products, and general merchandise. Star City is a town of several hundred inhabitants, with a dozen stores, and there are one or two other small villages along the line, the inhabitants depending no doubt largely on the sawmills for their employment. The tap line charges from $5 to $12 per car for hauling logs to the mill, being the regular Arkansas scale. On shipments from the mill operated by Muse, which is within one-eighth of a mile of Gould, joint rates that are the same as the Iron Mountain publishes from its local station at Gould are applied, and an allowance of 2 cents is made therefrom to the tap line. From other points on the tap line an arbitrary of from 2 to 5 cents per 100 pounds is added to the rate published by the Iron Mountain from the junction point; and the tap line receives the entire arbitrary in addition to the 2 cents allowed out of the earnings of the Iron Mountain. In other words, the seven or eight mills along the line that are described as independent pay from 2 to 5 cents per 100 pounds more than the mill leased by the controlling interest to Muse.

In this case no allowance out of the rate may be made, the mill of the controlling company being within a few hundred feet of the trunk line.

PRESCOTT & NORTHWESTERN RAILROAD.

The Prescott & Northwestern Railroad Company is an example of a well-equipped tap line which does a substantial outside business, only 75 per cent of its traffic being that of the Ozan Lumber Company, with which it is affiliated. The tap line has no branches and extends from Prescott, Ark., where it connects with the St. Louis, Iron Mountain & Southern in a westerly direction for about 40
miles to a point in the woods where it meets the unincorporated
the lumber company. At Tokio (see map, *post*,
tlement with one or two stores and less than 100
other incorporated tap line that is a party to the
s known as the Memphis, Dallas & Gulf. There
mall settlements along the Prescott & Northwest-
which has a population of 100 people, with five
wmill, gin, and canning factory. There are also
lependent sawmills in the country tributary to
ing their logs in by wagon; one or two of the

mills also haul their manufactured lumber several miles over to the tap line for shipment. The principal outside industry on the Prescott & Northwestern is a peach orchard established three or four years ago, having 2,000 acres of trees, from which many carloads of peaches were shipped during the past year to St. Louis; this traffic is developing rapidly. Seventy carloads of cantaloupes moved out over the Prescott & Northwestern in 1911. It is the assertion that the construction of this line has resulted in building up several small communities, and that there is great promise of future agricultural development along its line.

The Prescott & Northwestern has 6 locomotives, 101 freight cars, and 1 combination passenger and baggage car. Most of the equipment has safety appliances. Its road is substantially and permanently built, with 54 and 63 pound rail laid on gravel ballast. It has one or two station buildings; and its trains are dispatched by telephone. There are four section gangs and two train crews. It employs six station agents on commission, of whom all but one are storekeepers. In addition to carrying the mails and express 15,000 passengers were transported during the year 1910. There are two trains daily in each direction, one a mixed train and the other a passenger train, which from Tokio runs over the Memphis, Dallas & Gulf for 7 miles to Nashville, a town of 3,000 people. There is an arrangement by which the lines divide the revenues for this joint-passenger service. The record indicates that the tap line was organized in 1890, the mill being opened at the same time, and 8 or 9 miles of its line were built from Prescott out into the woods. It is said, however, that the lumber company then operating the mill had no direct interest in the road. Financial difficulties were encountered, however, and in 1892 the tap line was sold to Bemis & Whitaker, who were subsequently bought out by the Ozan Lumber Company. The tap line was extended to its present terminus, known as Helbig, about the year 1906.

The present capitalization of the Prescott & Northwestern is $30,000, having been reduced from $125,000. It has no bonds; but it is indebted to the Ozan Lumber Company for money borrowed to the extent of $570,000, of which $350,000 is secured by a mortgage. The stockholders of the two companies are identical and hold their shares in the same proportion. It is admitted that the tap line has been financed by the lumber company, and they have the same principal officers. The bookkeeper of the lumber company serves the tap line as auditor, without additional salary.

The timber holdings of the Ozan Lumber Company aggregate 40,000 acres, or upward of 250,000,000 feet, and were acquired between the years 1900 and 1907. The mill is in the village of Prescott,

about 1,000 feet from the right of way of the Iron Mountain; but the track on which lumber is loaded connects with the tap line at a point which for convenience is referred to as Dian. The logs are brought from Helbig, the beginning of the unincorporated logging spurs, to the mill by the tap line under the contract rate of $1 per 1,000 feet, log scale, for the haul of 41 miles. The charge is intended also to cover rental for the rails and fastenings furnished by the tap line for the use of the lumber company in its logging spurs. No bills of lading or other shipping papers are issued for the movements of the logs to the mill. The outbound lumber is switched by the tap line from the mill to the interchange track of the Iron Mountain, a distance of about 1,200 feet; and the bills of lading issued by the tap line's agent show Dian as the point of origin. So far as the billing is concerned, the traffic, therefore, does not move on a milling-in-transit basis. The rates, however, from Dian, the mill point, are the same as from Helbig, at the farther end of the tap line, and are the same as the Iron Mountain rates from the junction point. And the officials of the tap line admit that its division of from 3½ to 6 cents per 100 pounds received from the Iron Mountain out of the joint rates is intended also to take care of the cost of hauling the logs into the mill. There is a division of only 1 cent on the rate to Texas points.

In moving the lumber from the mill of the proprietary lumber company to the Iron Mountain we think that this line may be said to perform a service of transportation, or a switching service, for which it may be reasonably compensated out of the rate. It is clear, however, that the divisions allowed are altogether beyond reason, and that an allowance out of the rate of $1.50 a car is all that lawfully may be paid by the trunk line.

CADDO & CHOCTAW RAILROAD.

We are definitely advised that since the submission of this proceeding the tap line known as the Caddo & Choctaw Railroad has been taken over by the Memphis, Dallas & Gulf, another tap line that is party to the record and which is hereinafter discussed. We shall therefore make only a brief statement of the principal facts shown of record with respect to the Caddo & Choctaw. It was incorporated in 1907, and the first 4 miles of its track connecting with the Iron Mountain at Rosboro, Ark., and extending into the woods was constructed. In addition to this track, the Caddo River Lumber Company, in whose interest the tap line was incorporated and owned, had an unincorporated logging track about 2 miles in length. Subsequently extensions of the tap line were laid, until at the time of the hearing it had about 14 miles of track running from Rosboro to a

point known as Cooper, about a mile and a half from a town of 500 people known as Daisy. The statement on the record was that the people of Daisy were moving over to Cooper. Each holder of two shares of the Caddo River Lumber Company held one share in the railroad corporation. The latter was indebted to the lumber company in a sum exceeding $100,000 for money advanced for the construction of the line.

The mill of the lumber company was about one-fourth of a mile from the Iron Mountain station at Rosboro. It had at the time of the hearing several miles of unincorporated logging tracks connecting with the tap line at various points. The tap line had 1 locomotive and 18 cars, used chiefly in hauling the logs to the mill, for which service a charge of 50 cents per 1,000 feet, log scale, was made against the lumber company, there being no tariff covering the charge. The tap line also switched the lumber from the mill to the Iron Mountain, and received out of the earnings of that company a division of 4 cents per 100 pounds, except to a limited territory, where the division was only 2 cents. On shipments to points within the state of Arkansas the tap line's charge of 4 cents was added to the rate of the Iron Mountain, there being no joint rate.

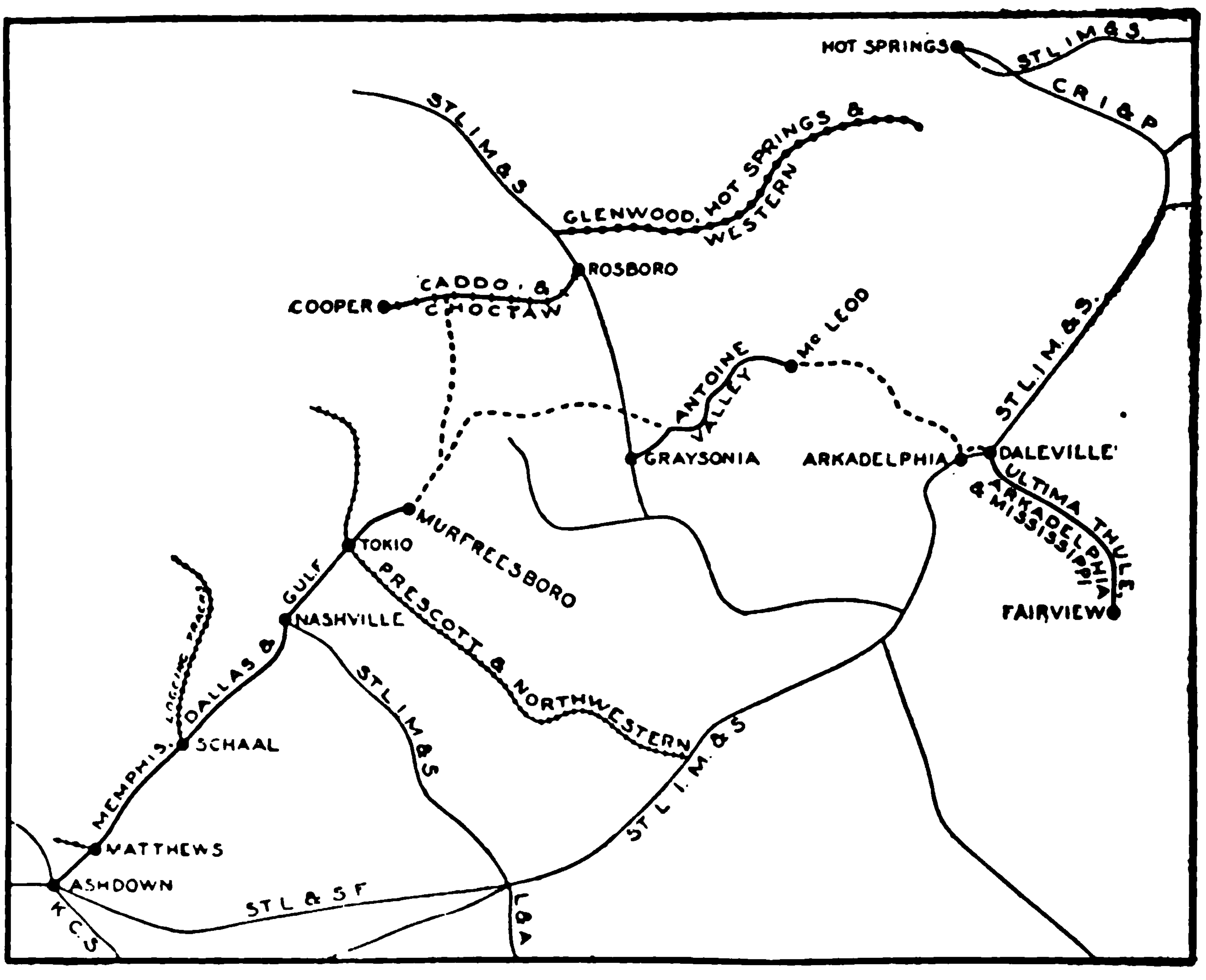
The record indicates that no logs were hauled for others than the controlling company, but there were a few outside shippers of staves, etc. Out of its total traffic of 150,000 tons for the fiscal year ending June 30, 1910, more than 95 per cent was the logs and lumber of the proprietary company. Very little merchandise freight was handled and no charge was assessed on less-than-carload movements. There were two or three carloads of fertilizer, cottonseed meal, and cake. A single log train was run daily in each direction, on which passengers were permitted to ride at their own risk, without charge. Out of the aggregate earnings of $19,688.62 for the fiscal year 1909, only $27.96 accrued on traffic in which the lumber company was not directly interested. The following year the operating revenue was $24,550.53. It files annual reports with the Commission.

As its facilities and practices are described on the record, it is apparent that the Caddo & Choctaw was nothing more or less than a facility of the plant of the Caddo River Lumber Company.

In disposing of its ownership of this tap line the Caddo River Lumber Company reserved a trackage right over it for its own logging trains, and in this manner the lumber company continues to haul logs from its forest to its mill. That is our information, and we do not understand that it receives any allowance out of the rate. If, as probably is the case, the Memphis, Dallas & Gulf switches the lumber from the mill to the Iron Mountain rails, it is entitled to receive for the service nothing beyond a reasonable switching charge, which we fix at $1.50 a car.

MEMPHIS, DALLAS & GULF RAILROAD.

The Memphis, Dallas & Gulf Railroad Company is controlled, through the ownership of practically its entire capital stock, by the stockholders of the Graysonia & Nashville Lumber Company; but the railroad corporation has separate officers who are not employed by the lumber company, with the exception of its traffic manager, who receives no salary from the railroad and is general manager of the lumber company. It was incorporated in 1906 as the Memphis, Paris & Gulf, the corporate name being changed on June 1, 1910, when it took over the operation of two other tap lines known, respectively, as the Antoine Valley Railroad and the Ultima Thule,



Arkadelphia & Mississippi Railway. The tracks of the three tap lines that are now consolidated and known as the Memphis, Dallas & Gulf are separate and disconnected, but form a part of a single proposed route. They are shown on the map herewith and may be briefly described and their history stated as follows:

The Memphis, Paris & Gulf, prior to 1910, consisted of about 41 miles of track extending in a northwesterly direction from Ashdown, Ark., through Nashville and Tokio to Murfreesboro. It connected with the Kansas City Southern and Frisco at Ashdown, with the Iron Mountain at Nashville, and at Tokio with the Prescott & Northwestern, another tap line which is a party to this record. The construc-

tion of the track from Ashdown to Nashville was apparently begun early in 1906; but the 15 miles from Nashville to Murfreesboro was not laid until 1908. The Memphis, Paris & Gulf was controlled by the Nashville Lumber Company, which had a large mill on its tracks at Nashville, about one-half mile from the junction with the Iron Mountain. The timber holdings of that company west of Nashville were quite extensive, and it had many miles of logging tracks connecting with the incorporated road at various points.

The Antoine Valley Railroad Company was controlled by the Grayson-McLeod Lumber Company, and was operated in the interest of its mill at Graysonia, Ark. The track connected with the Iron Mountain at that point and extended several miles through the land and timber of the controlling company. We understand that the title to the railroad right of way was vested in the lumber company. The mill was within one-half mile of the Iron Mountain, and the tap line switched the lumber for that distance. It received a division from the trunk line of from 2 to 5 cents per 100 pounds. It did not haul the logs to the mill.

The same interests that owned the Antoine Valley also controlled the Ultima Thule, Arkadelphia & Mississippi Railway, which had about 17 miles of track connecting with the Iron Mountain at Daleville, near Arkadelphia, Ark., and extended eastward to a point known as Fairview. The mill of the Grayson-McLeod interests when in operation several years ago was at Daleville, but it was dismantled and apparently removed to Graysonia when the yellow-pine timber was cut out, the only mills remaining on the Ultima Thule tap line being hardwood mills that are apparently not owned or controlled by the Grayson interests.

In the summer of 1910 the Nashville Lumber Company and the Grayson-McLeod Lumber Company were consolidated as the Graysonia-Nashville Lumber Company, and at the same time the Memphis, Dallas & Gulf took over the operation of the tap lines described. The consolidated tap line as described on the record consisted at the date of the hearing of the three detached sections of track already described, being respectively 41, 6, and 17 miles in length; the intervening gaps are "under construction," as is stated. The owners have in contemplation, as they assert, an extension of the line for about 190 miles southwestward to Dallas, and to the north it has approached within 200 miles of Memphis. It also announces the intention, expressed by most of the tap lines on the record, of building into Hot Springs, Ark.

The Commission is advised that since the hearing the Memphis, Dallas & Gulf has acquired two other properties, one being the logging road of the Clark Lumber Company, known as the Glen-

wood, Hot Springs & Western Railroad, and extending for 20 miles southward from a point near Hot Springs. It has also purchased the Caddo & Choctaw Railroad, the track and operations of which are hereinbefore described. The intention of the Memphis, Dallas & Gulf in absorbing these two roads is said to be to connect them up with its own line and thus accomplish its desire to get into Hot Springs.

In addition to its officers, the Memphis, Dallas & Gulf claims to have 5 clerks, 10 station agents, 6 train crews, 46 track men, and a number of other employees. It is said that none of its agents are employed by the lumber company. It has station buildings at seven points on its disconnected lines.

The equipment consists of 5 locomotives, 4 passenger cars, 9 freight cars, and 5 other cars. The controlling lumber company itself owns and operates 4 locomotives and about 130 cars. The tap line runs two trains daily in each direction between Ashdown and Murfreesboro on which passengers are carried; the record does not indicate whether lumber and other freight moves in the same trains. The Prescott & Northwestern apparently runs a single train, carrying passengers, over this tap line under trackage rights between Tokio and Nashville, the Memphis, Dallas & Gulf receiving one-third of the passenger earnings. A single "mixed train" is operated daily over the track formerly known as the Ultima Thule tap line, on which a few passengers are apparently carried. The only service over what was formerly the Antoine Valley is logging trains, which seem to be run irregularly.

The annual report for 1910 indicates a passenger revenue of $24,488.54; express revenue, $1,283.79; and mail, $1,623.30. During the same year the aggregate freight movement was 446,894 tons, of which 177,388 tons were forest products. These figures include the logs hauled by the lumber company itself under trackage rights. The proprietary company supplied 35,202 tons of forest products and about 130,000 tons of logs. Sand and gravel aggregating 250,980 tons were taken from a pit owned by the tap line and sold by it to connecting carriers; about 80 per cent of the inbound coal movement, amounting to 5,272 tons, was consigned to the railroad company itself. Steel rails weighing 204 tons were handled on account of the lumber company for use in its spurs. The outside tonnage included 7,090 tons of lumber for others than the proprietary company, and a small amount of other freight, the total outbound movement of agricultural products being 3,657 tons. The figures given are all for the year ending June 30, 1910, and as the consolidation of the three companies did not take place until June 1 of that year the figures practically relate only to what was formerly the

Memphis, Paris & Gulf. The report to the Commission for the fiscal year ending June 30, 1911, during which the entire property was operated by this company, indicates an aggregate freight movement of 167,939 tons, of which forest products comprised 86,966 tons, or about 52 per cent; there were 55,600 tons of sand and gravel and 5,850 tons of coal. The outbound movement of cotton and other products of agriculture amounted to 6,383 tons.

The lumber company has about 30 miles of unincorporated logging tracks connecting with the tap line at various points, particularly at Schaal and Matthews, on the original Memphis, Paris & Gulf. It also has trackage rights for the operation of its logging trains over the tap line to the mill at Nashville, paying therefor a wheelage charge, which was formerly $5 per car, but was reduced to 50 cents per car on June 1, 1910. The lumber company therefore loads the logs on the logging spurs in the woods and hauls them all the way to the mill, paying the tap line 50 cents per car for the privilege of using its tracks. The tap line has never hauled logs for the lumber company, but does so for some independent producers. The tap line switches the empty and loaded cars for lumber movement between the mill at Nashville and the interchange track with the Iron Mountain, a distance of about one-half a mile. In the case of traffic moving out over the Kansas City Southern it hauls the cars a distance of 27 miles to Ashdown. The traffic from the Nashville mill is divided about equally between the two trunk lines, which allow the same divisions, varying from 4 to 6½ cents per 100 pounds, out of their rates on yellow-pine lumber.

In view of the extent of the passenger traffic over the Nashville division, the volume of the outside freight traffic over that disconnected part of this tap line is surprisingly small. For the service of the tap line in handling the products of the mill at Nashville the Iron Mountain may allow it out of the rate a switching charge of $2; the connecting carriers at Ashdown may allow it out of the rate divisions not exceeding 2 cents per 100 pounds.

The lumber company also has private logging tracks connecting with the Antoine Valley division of the tap line at Graysonia and Leard. The logs are hauled by the lumber company to the mill at Graysonia in the same way and under the same trackage charge as applies in connection with the mill at Nashville. The tap line switches the lumber from the mill at Graysonia for a distance of about 500 feet to the Iron Mountain, which pays it an allowance of from 4 to 6½ cents per 100 pounds. We do not understand from the record that any outside traffic moves over these tracks.

The allowances paid on the movement of lumber from this mill we regard as wholly unlawful under the principles announced in the

original report. No allowance at all may properly be paid on the lumber of this mill.

As heretofore stated, the proprietary company has no yellow-pine mill on the so-called Ultima Thule division, but there are several hardwood mills on that track, which have the benefit of the junction-point rate from their mills to certain destinations, but to other territory have to pay an arbitrary over the rate of the trunk line, the additional charge amounting in some cases to as much as 5 cents.

The tap line also interchanges a considerable tonnage of lumber with the Prescott & Northwestern at Tokio. On such traffic received from the other tap line the Memphis, Dallas & Gulf has a division of 2 cents per 100 pounds for the haul over its line.

We have already referred to the acquisition by the Memphis, Dallas & Gulf of the incorporated tap line of the Caddo Lumber Company, known as the Caddo & Choctaw Railroad, and of the unincorporated line of the Clark Lumber Company, named the Glenwood, Hot Springs & Western. The vendors of these properties, by a formal agreement with the Memphis, Dallas & Gulf, reserved to themselves the privilege of operating logging trains over the tracks in question at a charge of 50 cents per carload. This arrangement has apparently become effective; if so, it is unlawful. We do not understand that a shipper may have a preference over other shippers in the use of a line that claims to be a common carrier.

CRITTENDEN RAILROAD.

The stockholders of the Crittenden Lumber Company own $143,000 of the capital stock of the Crittenden Railroad Company, which aggregates $150,000. Part of the remainder is held by persons in one way or another connected with the lumber company, but stock amounting to $5,000 is owned by the president of the tap line, who was formerly interested in the mill, but who claimed at the time of the hearing to have no interest of any kind in the lumber company or in any other industry served by the tap line or in its vicinity. The lumber company owns about 75 per cent of the timberland tributary to the tap line.

The track of the Crittenden Railroad Company extends from Earle, a point on the Iron Mountain about 25 miles west of Memphis, southward for 15 miles to a connection with the Rock Island, at Heth, and then a mile or two beyond. There are 3 or 4 miles of logging spurs and sidetracks. It was incorporated in August, 1905, when 7 or 8 miles were already in operation as a private logging road, the constructing of the line having been begun by the lumber company as long ago as 1899; the track was built into Heth in 1908. The tap line has 2 locomotives, 3 box cars, 1 flat car, and 19 logging cars. It

hauls the logs from the forest to the mill, which is about 2½ miles south of Earle, charging the lumber company $5 per car. The mill manufactures hardwood only, and its product moves in about equal proportions over the two trunk lines, the haul over the tap line to the Iron Mountain being about 2½ miles and to the Rock Island over 13 miles. Each of the trunk lines makes an allowance of 2 cents per 100 pounds out of its rates to Memphis, Cairo, St. Louis, and Kansas City. On shipments moving to points where there are no divisions in effect the tap line makes a local charge in addition to the rate of the trunk line.

There are said to be seven manufacturing plants served by the tap line in which neither the Crittenden Lumber Company nor the owners of the tap line have any interest; the tap line charges the regular local rates for the movement of logs to these independent mills. It is also claimed that less than 75 per cent of the entire traffic is supplied by the controlling lumber company. Passengers are carried free in the caboose. For the fiscal year ending June 30, 1910, the aggregate freight moving was 78,805 tons, of which 55,719 tons was logs, lumber, and coal for the Crittenden Lumber Company, and 23,186 tons was merchandise and other commodities handled for the public, as is said. It is of interest to observe, however, that a substantial portion of the outside tonnage claimed by the tap line originated at or was destined to the town of Earle, which is served by the Iron Mountain. In other words, the Rock Island, in connection with the tap line, now divides with the Iron Mountain the traffic of the town of Earle. For example, one of the witnesses on the hearing was a merchant at Earle, whose cotton gin is on a sidetrack connecting with the Iron Mountain. He drays a considerable quantity of cotton to the tracks of the Crittenden Railroad, and the cars are then routed through Heth and over the Rock Island to Memphis.

The tap line files annual reports with the Commission, but the information given is far from complete; and the record indicates that its accounts are not kept in accordance with the regulations of the Commission.

In this case we think that an allowance out of the rate of 2 cents per 100 pounds on the product of the mill may lawfully be made to the tap line by the Rock Island and that for its short switching service to the Iron Mountain rails the latter may lawfully allow a switching charge of $3.

WILSON NORTHERN RAILWAY.

The Wilson Northern Railway was originally constructed as a private logging road extending from the sawmill situated at a point now known as Wilson, Ark., about 1 mile from the Mississippi River, northward for 10 miles into the timber. There was at that time no trunk line in the vicinity. The Frisco was subsequently extended

through and is now joined by the tap line at Wilson. In addition to the 10 miles just mentioned the record states that the tap line operates about 7½ miles of track extending northward from its own terminus to a connection with the Jonesboro, Lake City & Eastern at Ross. This track was owned by Moore & McFerren, a lumber firm, and has been purchased by the Wilson Northern since the hearing. The tap line also has trackage rights over the Frisco for a distance of about 21 miles from Deckerville to Wilson, paying the Frisco $4 per loaded car and $2 per loaded truck. The equipment consists of 3 locomotives, 1 caboose, 2 box cars, and 15 flat cars.

The Wilson Northern Railway Company was incorporated in December, 1904, with a capital stock of $100,000, which is held by the same persons who owned the stock of Lee, Wilson & Company, which operates the mill at Wilson. The two companies have the same principal officers.

The tap line hauls the logs from the point of loading on its own track or from the spurs on the Frisco near Deckerville to the mill. The mill is reached by a spur track about a mile and a half long, owned by the Frisco, and the tracks of the tap line do not reach the mill. Nevertheless the tap line, as a matter of fact, switches the lumber over the spur track to the point from which it is actually taken by the Frisco engines. The record does not describe any movements of lumber from the mill northward over the line of the tap line, and the track formerly owned by Moore & McFerren to Ross; and apparently shipments were not routed that way prior to the hearing. The Frisco allows the tap line 2 and 3 cents per 100 pounds out of the joint rates, which are the same from points on the tap line as from the junction point with the Frisco, except from Ross, where the rate is one-half cent higher, the division of the tap line being increased by that amount. In addition to these allowances out of the trunk line's earnings the tap line charges the lumber company 2 cents per 100 pounds for hauling the logs to the mill.

At the time of the hearing the Wilson Northern did not carry passengers, mail, or express matter. Mention is made on the record of a small independent sawmill and a manufacturer of staves and heading. Out of a total movement of 85,635 tons during the fiscal year 1910, the volume of logs and lumber amounted to 81,780 tons, of which about 85 per cent was furnished by the proprietary company. There were 4,253 tons of merchandise and agricultural products, a substantial portion of which was doubtless consigned to the store of the lumber company, although there are one or two independent stores on the line.

We are advised that on September 15, 1911, the Wilson Northern was leased to the Jonesboro, Lake City & Eastern Railroad Company, by which it is now operated, the rental reserved by its owners

being $12,000 per annum. The Jonesboro, Lake City & Eastern has over 100 miles of road, operates regular passenger trains, and has a general freight-train movement under tariffs filed with the Commission. We had not understood that the tap-line question had any application to it. Nevertheless, it has failed to make annual reports to the Commission. It is apparent that the situation with respect to these lines needs further examination; and we shall withhold announcement of any conclusion respecting the Wilson Northern or the tracks formerly operated by it. We shall look to the trunk lines, however, to give effect to the general views that we have expressed in this proceeding.

MANILA & SOUTHWESTERN RAILWAY.

The Manila & Southwestern Railway Company is apparently owned by four brothers, named Taylor, who bought the property in at a foreclosure sale in 1907 for an amount approximating $28,000. The record indicates that they had previously advanced the money used in its construction. Two of the brothers seem to have acquired at the same time a sawmill at Lunsford, Ark., at the northern end of the tap line, while the other brothers have extensive farms on the line. The track is five miles in length and extends from Lunsford to Herman, where it connects with the Frisco. In addition to the mill at Lunsford, which is of comparatively small capacity and which was closed down from 1907 to 1909, there is a cooperage plant on the tap line about 1,000 feet from its connection with the Frisco; and there is another small sawmill about one-half mile from Herman.

The tap line has one locomotive, a flat car, and a caboose, which make a regular daily round trip. Passengers are carried, but the record gives no indication whether fares are paid or of the revenues from that source.

The tap line does not file annual reports with the Commission and we have little information respecting its traffic. The statement made on the record is that during the year 1909 the Taylor interests supplied only 10 per cent of the traffic. During a considerable portion of that year their mill was closed down. During the first six months of the calendar year 1910 a statement filed of record shows the movement of 15.584 tons of logs, 1,927 tons of lumber, about 140 tons of merchandise, and 8 tons of cottonseed. We are not told what proportion of this traffic was furnished by those not interested in the tap line, nor does the record indicate whether there are logging spurs or the manner in which the logs reach the mill. It is stated, however, that some logs are moved by the tap line to Herman and thence by the Frisco to Nettleton and other points, where they are manufactured. The tap line receives from the Frisco a division of 2 cents

per 100 pounds out of the rates on lumber and 1 cent per 100 pounds on logs and stave bolts. On merchandise and cottonseed a local charge is made by the tap line for the haul to the junction.

This tap line has not recognized itself as a common carrier under the act to regulate commerce to the extent of filing an annual report with the Commission. Until it has complied with the provisions of the act and we are more fully informed with respect to its operations we shall hold that it has not shown that it may lawfully receive divisions out of the through rate on the traffic of its proprietors and others affiliated in its ownership and operation.

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DE QUEEN & EASTERN RAILROAD.

The stockholders of the Dierks Lumber & Coal Company own nine-tenths of the capital stock of the De Queen & Eastern Railroad Company, and the two companies have practically the same officers. The tap line was incorporated in 1900 and the two companies were in their origin one and the same investment, and have so continued to the present time, the railroad being built as a facility in the lumbering operations. The book value of the road is said to approximate $600,000 and capital stock is outstanding to the amount of $593,700. When the mill was opened, in 1902, about 8 miles of the track had been laid. As described on the record, the tap line consists of about 27 miles of main track connecting with the Kansas City Southern at De Queen, Ark., extending southeasterly to a point known as Locksburg, and thence northeasterly to its terminus at Dierks. There are also about 15 miles of logging spurs and sidings, and the tap line has steel sufficient for about 30 miles of logging spurs. The tap line claims to have four station buildings along its line, costing about $1,000 each, with a building used as its general office at De Queen. It also has track scales for weighing carload shipments and shops for repairing its equipment. There are 5 locomotives, 3 box cars, 74 flat cars, and 20 other cars, and in addition 2 log loaders. The tap line has 5 station agents, 1 train crew, and a number of track and shop men. It is said that none of its employees work for the lumber company. But the salaries paid by the tap line to its officials, who are also officials of the lumber company, aggregate $650 per month.

The yellow-pine sawmill of the controlling company was formerly located at De Queen, within one-quarter mile of the tracks of the Kansas City Southern, but it was destroyed by fire about a year previous to the hearing. The statement made of record is that the mill will be rebuilt when the condition of the lumber market improves. The proprietary company also has a small hardwood mill, which was shut down shortly after the burning of the yellow-pine mill. It

is said that there are also six independent sawmills along the line and five cotton gins. The capacity of these mills is not stated, but seems to be small. There are five towns or settlements along the line, having a population of three or four hundred each, with one or two stores; one is a county seat. The tap line carries passengers, mail, and express, its revenues from that traffic aggregating about $7,000 for the fiscal year 1910. Its freight revenues for the same year aggregated $46,603.76. The freight moved consisted of 49,217 tons of lumber and forest products and 5,301 tons of other commodities. The tonnage of lumber represented the shipments that had accumulated before the mill was burned together with about two months' supply of logs for the hardwood mill. At the time of the hearing very little lumber was left at the mill for movement.

When the mill was in operation the practice was for the tap line to load the logs on the logging spurs, making a charge of $1.25 per car against the lumber company; the tap line set up an additional charge of $6 per car for hauling the logs over the spurs to the junction with its main track, including the maintenance of the spurs; and without charge against the lumber company the tap line hauled the logs over its main track to the mill. It also switched the lumber from the mill to the trunk line, a distance of about a quarter of a mile. The trunk line allowed out of its rates on yellow-pine lumber divisions varying from 2 to 6 cents per 100 pounds, the average allowance actually made approximating 4 cents. The rates from points on the tap line, however, are 2 cents higher than the rate of the trunk line from the junction point, so that the net allowance runs up to 4 cents or less, the average net allowance being about 2 cents. No arbitrary is added to the junction point rate to make the rates from points on the tap line on hardwood lumber.

We are not advised whether the mill has been rebuilt and is again in operation. But if so, no division should be made on its products in excess of a reasonable switching charge, which we fix at $1.50 per car.

CENTRAL RAILWAY OF ARKANSAS.

The Central Railway Company of Arkansas was incorporated in January, 1906, with a capital stock of $2,600,000. Its charter describes a line 130 miles in length terminating at or near Hot Springs, Ark.; but as actually completed in 1907 it terminates at a point known as Brizi, Ark., about 13 miles from its other terminus at Ola, where it connects with the Rock Island. Only 10 per cent of the authorized capital is outstanding, that amount having been issued to the Fort Smith Lumber Company, which furnished the funds for building the track and purchasing the equipment, and by

which the stock was transferred, apparently as a dividend, to its own stockholders. The mill of the lumber company is at Plainview, on the tap line 7 miles from its junction with the Rock Island. The lumber company has an unincorporated logging track extending into its timber from a point intermediate between the mill and the junction point, but it has no engines or cars. The tap line has 5 locomotives, a combination passenger car, 3 box cars, and 16 flat cars. It also has three train crews, a number of track men, and a station agent at the mill point, Plainview, where there is a station building.

The logs are hauled by the tap line to the mill, an average distance of from 7 to 10 miles, at a charge of 50 cents per 1,000 feet, log scale, set up against the lumber company. The tap line also moves the lumber from the mill to Ola, a distance of 7 miles, and receives from the Rock Island a division of from 3¾ cents to 4 cents per 100 pounds.

It is claimed that there are three independent sawmills on the tap line and five or six other mills in that vicinity which haul their lumber to the tap line for shipment. But it appears that the aggregate lumber shipments furnished by others than the Fort Smith Lumber Company does not exceed 80 carloads per annum. All of these independent mills receive their logs by dray and their capacity is undoubtedly small. The report to the Commission for the fiscal year 1910 states the movement of forest products as 58,108 tons, substantially all of which seems to have been supplied by the proprietary company. It is stated that 40 per cent of the miscellaneous freight, amounting in the same year to 17,360 tons, was supplied by the lumber company. Only 1,558 tons of this miscellaneous traffic moved outbound. The junction point, Ola, is a town of about 1,000 people. Plainview seems to be a company town, having a population of about 1,500; and has been built since the opening of the mill and construction of the tap line. It is said to have two banks and six general stores. The tap line carries passengers, its revenue from that traffic aggregating $3,654.70 for the year 1910, in addition to which it received $644.31 for the carriage of mail and express matter. It had a net surplus on June 30, 1910, of $2,650.60, resulting from its operations for previous years, there being a slight deficit for that year.

In this case we fix a maximum of 1¼ cents as the division of this tap line out of the rate on the products of the mill of the controlling company.

LOUISIANA & PINE BLUFF RAILWAY. w

The Louisiana & Pine Bluff Railway Company is owned by the Union Sawmill Company, which itself is subsidiary to and owned by the Frost-Johnson Lumber Company. The three companies are one in interest. The facts are somewhat involved, but it will be well to state in some detail the history of the whole investment.

The Union Sawmill Company was incorporated in December, 1902, and acquired a large body of timber lying in southern Arkansas and across the line in Louisiana. It opened a sawmill at Huttig, Ark., and as a facility for the lumbering operations the Little Rock & Monroe Railway Company was incorporated, and 44 miles of track were constructed, extending from a connection with the El Dorado & Bastrop division of the Iron Mountain at Felsenthal to Monroe, passing through Huttig.

Immediately after the completion of this line, in the spring of 1905, it was sold to the Iron Mountain for about $580,000 in cash, the right being reserved to the sawmill company, in a contract with the Iron Mountain, to operate its logging trains over the Little Rock & Monroe, the El Dorado & Bastrop, and Farmerville & Southern, being subsidiary lines of the Iron Mountain system, at a trackage charge of 35 cents per train-mile. At about this time, and apparently pursuant to a suggestion by the Iron Mountain officials, the sawmill company acquired extensive additional holdings of timber land valued at more than $1,000,000. The contract heretofore referred to required the sawmill company and C. D. Johnson individually to organize a railroad corporation for the construction of a new line northerly from Huttig, to reach the timber in that direction and make it available for manufacture at the mill at Huttig. The provision in the contract was that the proposed railroad should be constructed and incorporated in such manner as to justify the publication of joint rates and the payment to it of allowances. In accordance with this agreement the Louisiana & Pine Bluff Railway Company was incorporated in March, 1905, with a capital stock of $300,000, which was issued to practically the same persons that owned the Union Sawmill Company. The so-called terminals in the vicinity of the mill at Huttig, as well as the locomotives, cars, and other equipment that had been used on the Little Rock & Monroe previous to its sale to the Iron Mountain, were turned over to the tap line by the sawmill company in exchange for stock, which stock is still held by the sawmill company. This, in brief, is the story of the investment.

The Louisiana & Pine Bluff, as described on the record, has a main track 3 miles in length connecting with the Farmerville & Southern and Little Rock & Monroe divisions of the Iron Mountain at Huttig, and extending to Dollar Junction, where it meets the El Dorado & Bastrop division of the same system. There is also about 5 miles of track beyond Dollar Junction which was not yet completed for operation at the date of the hearing. From Huttig a track nearly 22 miles in length extends westward in a general way parallel to the Iron Mountain. This track was not included as part of the incorporated road until shortly prior to the hearing, as we shall hereinafter

state. We shall also refer again to the logging tracks, aggregating 75 miles in length, some of which are included as part of the incorporated line, while others are not. A track or branch about 3 miles in length, extending from Felsenthal to the river, was reserved when the Little Rock & Monroe was sold to the Iron Mountain, and was afterwards conveyed by the lumber company to the Louisiana & Pine Bluff. It was used for hauling logs from the river, and when the lumber company ceased getting logs from that source the track was abandoned and taken up. The equipment of the tap line consists of 12 locomotives, 1 combination passenger car, 1 caboose, 31 box cars, 36 flat cars, 22 coal and other cars, and 152 logging cars.

The track 22 miles in length from Huttig to El Dorado & Bastrop Junction, which has been referred to above, was constructed by the tap line, but until a year and a half before the hearing it was operated by the Huttig Logging Company, owned by the Frost-Johnson interests. The annual report for 1911 does not include this track as part of the tap line, but it is distinctly so included on the record. Nothing was paid by the logging company or the Union Sawmill Company to the tap line for the use of the tracks. Connecting with the tap line at various points are logging branches, one of which is 7 miles in length and another 21 miles long. These are referred to on the record as main logging stems; and connecting with them are logging spurs which are built by the logging company, the necessary steel being loaned by the tap line without charge. These spurs are operated by the logging company, which uses locomotives and cars belonging to the tap line, no rental being paid, although the locomotives are kept in repair by the tap line at its own cost.

The logging company loads the cars in the timber and moves them, with the engines borrowed from the tap line, to the main track. The cars are taken the rest of the way to the mill by the tap line, no charge being made against the lumber company or the logging company for the movement, although the trainmen employed by the tap line do the unloading.

The mill of the lumber company, as heretofore stated, is at Huttig and is directly accessible to the Iron Mountain. The plant covers about 160 acres. The lumber could be taken by the Iron Mountain directly from the mill; but as a matter of fact it is moved by the tap line for a distance of 3 miles to Dollar Junction, and there delivered to the Iron Mountain, which allows 5 cents per 100 pounds out of its rates on yellow-pine lumber to all destinations. The rates on hardwood lumber are about 2 cents lower than the rates on yellow pine, and on such traffic the Iron Mountain allows 3 cents per 100 pounds. On all lumber the rate of the Iron Mountain from the junction point is published as a joint rate from points on the tap line.

The Wisconsin Lumber Company, which is affiliated with the International Harvester Company, has a large hardwood sawmill on the tracks of the tap line at Huttig. It obtains a portion of its hardwood logs from the Union Sawmill Company, at a price including their delivery at the mill. Such logs are hauled to the mill in the same manner as the yellow-pine logs moving to the Union sawmill. The hardwood logs which the Wisconsin Lumber Company obtains from the lands owned by others are also brought to the mill without charge, the service being performed by the logging company and the tap line in the manner already described. The manufactured lumber is moved from the Wisconsin Lumber Company's mill to Dollar Junction by the tap line, which receives the divisions heretofore stated. The annual report to the Commission for the fiscal year ending June 30, 1910, shows no tonnage other than forest products moving outbound and coal coming inbound. The coal was consumed entirely by the sawmill company, the logging company, and the tap line itself, and aggregated 3,835 tons. Out of the total of 317,473 tons of logs and lumber handled during the same year, about 7,900 tons was manufactured by others than the sawmill company from logs cut on the lands of that company. The tap line has joint rates with the Iron Mountain on coal as well as lumber, but not on merchandise or class traffic. The record indicates that no charge is made for hauling logs that are cut by farmers or others and manufactured at the mills on the tap line. Although the tap line claims to run "two passenger trains daily" between Dollar Junction and Huttig, it has but one combination coach, and its receipts from passengers for the year 1910 amounted to only $587.24. Its mail revenue amounted to $101.31. Its operating revenues for that year aggregated $78,714.93, and this amount was substantially less than its operating expenses. On June 30, 1910, it had an accumulated deficit of more than $85,000, which we assume has been taken care of in some way by the lumber company or its owners.

This is a typical instance of a mere manipulation of its facilities in such a way as to give the tap line the appearance of performing a service as a basis for an allowance out of the rate. Indeed, it was agreed, as heretofore stated, that the tap line should be constructed in such a manner as to justify allowances. A glance at the map will show how this was done. The Iron Mountain reaches the mill with its own rails, and is, therefore, in a position to serve the mill directly without making a concession to the lumber company out of the rate. The lumber company, however, has constructed a track of own 3 miles in length to the Iron Mountain rails, and in comtion for its service in switching its lumber over that track it es allowances of 5 cents a hundred pounds, or from $20 to $30 a We have already said that the extension of the trunk-line lum-

ber rate through the mill point to the tree stump on a tap line is discriminatory unless the same rate adjustment is in effect on the trunk line's own rails. The only service of transportation, therefore, that this tap line can be said to perform for the lumber company that owns it is the switching of the product of its mill to the trunk line, and this the latter is equipped to do upon its own rails. Under these circumstances we regard the arrangement as a mere device for the payment of allowances, which we hold to be unlawful.

We have already pointed out that a tap line claiming to be a common carrier can not render service for others without charge. It follows, if that is its status, that its practice of hauling hardwood logs without charge to the mill of the Wisconsin Lumber Company is unlawful. The divisions received by it for switching products of the Wisconsin Lumber Company's mill to the Iron Mountain are also unlawful.

MANSFIELD RAILWAY.

The Mansfield Railway & Transportation Company was incorporated as long ago as 1881, by the citizens of Mansfield, who built 2 miles of track from the town to a connection with the Texas & Pacific, at a point known as Mansfield Junction. Within the past 10 years this track and the equipment then in use was acquired by E. A. Frost and others, through purchase, for the sum of $12,500, of the entire capital stock of the railway company. At about the same time a large body of timber land was purchased, lying west of the line of the Texas & Pacific, and a sawmill was erected at a point near Mansfield, known as Oak Hill. The timber and the mill were held and operated by a corporation, owned by Frost and his associates, known as the De Soto Land & Lumber Company, which also held the stock of the Mansfield Railway. Some 6 or 8 miles of logging roads were constructed from a connection with the incorporated line into the timber. There is some obscurity in the record, but our understanding is that the Frost-Johnson Lumber Company was later organized by the same interests, and took over the property and business of the De Soto Company. The additional tracks that had been constructed by the Frost interests, however, were transferred in 1908 to their tap line corporation, the Mansfield Railway & Transportation Company. The lumber company reserved to itself the free privilege of operating logging trains between the timber and the mill; the value of this reservation was not reflected in the purchase price, which fully covered the value of the property transferred, as the record clearly indicates. The tap line has issued and outstanding capital stock to the amount of $77,300, all of which is held by the stockholders of the Frost-Johnson Lumber Company; and it is indebted to the lumber company in the sum of $216,806.97.

The two companies are identical in interest. There is a subsidiary corporation of the Frost-Johnson Company that performs the entire logging service. It is owned absolutely by the lumber company, which has assigned to it the trackage privilege over the tap line; and we shall refer to it hereinafter simply as the logging company.

The tap line as described on the record now consists of about 16 miles of track commencing at the town of Mansfield and terminating at a logging camp in the woods known as Hunter. In addition to the original connection with the Texas & Pacific at Mansfield Junction the tap line joins the Kansas City Southern, which subsequently built through this section, at a point about one and one-half miles east of Mansfield. The tap line has one locomotive, a passenger coach, and one box car; the logging cars are owned by the logging company. In addition to the incorporated road there are in the aggregate nearly 25 miles of unincorporated logging tracks in the woods.

The tap line does not haul the logs to the mill, which, as heretofore stated, is at Oak Hill, about three-fourths of a mile from the junction with the Kansas City Southern and two and one-half miles from the point of interchange with the Texas & Pacific. The mill is within 300 feet of the right of way of the Kansas City Southern, with which it was formerly connected by a spur track that was abandoned and later taken up. The logs are moved to the mill by the logging company under the reserved trackage right already referred to. The service performed by the tap line for the proprietary company consists in switching the empty and loaded cars for lumber shipments between the mill and the tracks of the trunk lines, a distance of three-fourths of a mile or two and one-half miles, respectively. The tap line, however, bears the expense of maintaining the incorporated tracks extending into the woods over which the logging trains are operated.

There are no other yellow-pine sawmills served by the tap line. But there is a hardwood mill adjacent to the mill of the Frost-Johnson Company, which apparently obtains a substantial portion of its logs from the Frost-Johnson Company or its subsidiary logging company, the price paid including delivery at the hardwood mill. Such logs are hauled to the mill by the logging company under its trackage right in the same manner that the logs are hauled to the Frost-Johnson mill. The hardwood mill also obtains some logs along the Texas & Pacific, which are switched by the tap line to the mill at a charge of \$2.50 a car or less. The tap line has joint rates on hardwood as well as yellow-pine lumber.

A good deal of outside traffic is handled over the original two miles of line from Mansfield to Mansfield Junction, but there is :tically no traffic in which the proprietary company is not inter-

ested over the remainder of the track. Hunter, at the western end of the line, is a logging camp, and there are very few settlers along the line who are not employees of the lumber company or the subsidiary logging company. During the fiscal year ending June 30, 1910, 28,596 tons of lumber were handled, of which 91.4 per cent was supplied by the Frost-Johnson Company. There was 16,539 tons of miscellaneous freight, almost all of which moved over the line between Mansfield and Mansfield Junction, and a considerable proportion of which was handled for the controlling interests or their employees. The tap line operates a daily train in each direction on regular schedule and handles passengers, mail, and express; but its revenues from passenger train operation during the year 1910 aggregated only $1,209.76, its freight revenue being $25,617.19.

As stated the spur track of the Kansas City Southern, about 300 feet long, which formerly went directly into this mill, was torn out; the switching is now done over a track of the tap line three-fourths of a mile long. This arrangement being effected, the Kansas City Southern thereupon undertook to pay the tap line allowances of 1 to 4 cents per 100. We hold this to be a mere manipulation of the situation in order to establish a relation that is unlawful. The tap line also crosses the right of way of the Texas & Pacific within a short distance from the mill, but the lumber is switched by the tap line back toward Mansfield and then to the junction with that line, a distance of about 2½ miles; the tap line receives from the Texas & Pacific 1 to 4 cents per 100 pounds. In this case we regard any allowance as unlawful.

GULF & SABINE RIVER RAILROAD.

We gather from the record that the Gulf & Sabine River Railroad Company is controlled, through the ownership of its capital stock and bonds, by the Gulf Lumber Company, which is a subsidiary corporation or closely allied in interest with the Chicago Lumber & Coal Company, which has mills elsewhere and acts as sales agent for the Gulf Lumber Company.

The Gulf & Sabine River Railroad Company was incorporated in 1906 and is capitalized at $100,000 with a bonded indebtedness of $300,000. It consists of two separate tap lines, not physically connected, one known as the Stables division, connecting with the Kansas City Southern at Stables and extending about 8½ miles into the timber with logging spurs aggregating about 8 miles in length; the other known as the Fullerton division, comprising 10 miles of track, connecting with the rails of the Santa Fe at Nitram and extending to and beyond Fullerton, La. Since the hearing we are advised that active progress has been made on an extension of the

Fullerton division to Leesville, a point not far from Stables, where a connection apparently will be effected with the Kansas City Southern. The Lake Charles & Northern, a part of the Southern Pacific system, also connects with the Fullerton division at Nitram by means of trackage rights over the rails of the Santa Fe. In addition to the tracks already described, the lumber company has many miles of logging spurs which connect with the tap line at various points and which the lumber company maintains and operates, using for that purpose one or more locomotives leased from the tap line at a charge of $10 per day. The entire equipment of the Gulf & Sabine consists of 7 locomotives, 2 passenger cars, 95 logging cars, and 10 other cars. The lumber company has no rolling stock of its own.

The so-called Stables division is purely a logging road and has no outside traffic. Curiously enough there is no mention on the record of the mill on this portion of the tap line, but we understand from other sources that the controlling interests have two mills at Stables, one of which is within 150 yards of and is reached by a spur track from the Kansas City Southern. While the record is deficient in this respect, it is clearly indicated that on the Stables division, its only service is in the movement of logs to the mill and the switching of lumber from one of the mills to the Kansas City Southern. It charges the lumber company for the log movement $2.50 per car, and receives from the Kansas City Southern divisions of from three-fourths of a cent to 1 cent per 100 pounds. We hold this to be unlawful, and that no allowance may be paid to the tap line or to the controlling company on products of its mills on this division.

The construction of the tracks known as the Fullerton division was begun in 1907, before the mill of the lumber company was opened for operation at Fullerton, and before the line of the Santa Fe was built into Nitram. The tracks on this line are of unusually substantial construction, being laid with 56 and 60 pound rail, well ballasted, with a maximum grade of six-tenths of 1 per cent. It has a roundhouse, track scale, and telephone and telegraph wires for dispatching trains and other purposes. The record indicates that the Santa Fe offered to build into Fullerton, but the lumber company preferred to construct a tap line. Two trains are operated daily in each direction on a regular schedule for the transportation of passengers, express matter, and the mails, as well as for the transportation of lumber between the mill at Fullerton and the connection with the trunk lines at Nitram. The mill has a capacity of from 35 to 50 carloads of lumber per day, and its actual shipments are said to average 25 carloads. In a broad sense Fullerton is a company town, with a population of about 1,800 and a number of stores. The supplies needed

for a community of that size furnish more or less traffic for the tap line; its miscellaneous freight during the year 1910 amounted to nearly 10,000 tons. The passenger earnings of that year were \$3,809.25, and the express and mail revenues amounted to \$956.48. The lumber and logs of the controlling interests, however, amounted to 370,164 tons during the same year, or in excess of 90 per cent of the total traffic. It receives on this lumber an allowance from the Lake Charles & Northern of 25 per cent of the proportions accruing up to Lake Charles, La., or from 1 to 4 cents per 100 pounds. No allowance is made by the Santa Fe. The tap line also charges the lumber company a flat rate of \$2.50 per car for the movement of logs from the connection between the logging spurs and the incorporated track to the mill. There are also said to be several small mills in the territory traversed by the Gulf & Sabine River Railroad, which cut hardwood lumber chiefly from logs taken from lands of the Gulf Lumber Company.

The total operating revenue of the Gulf & Sabine in the year 1910 was \$116,359.74, its operating expenses aggregating \$76,067.43, leaving a net operating revenue of \$40,292.31. While it has paid no dividends on its capital stock it had an accumulated surplus on June 30, 1910, of \$34,969.16.

On this division of the tap line we think any allowance out of the rate in excess of 1 cent a 100 pounds on the products of the mill of the controlling company is unlawful. We fix that as a maximum.

LOUISIANA & PACIFIC RAILWAY.

The Louisiana & Pacific Railway Company was incorporated June 6, 1904, with an authorized capital stock of \$200,000, of which only \$51,000 has been issued. It is controlled by what is referred to on the record as the R. A. Long interests, 70 per cent of its capital stock being held by R. A. Long and the rest apparently by his agents and associates. The record indicates that Long owns the same proportion of the capital stock of the Hudson River Lumber Company, King-Ryder Lumber Company, Longville Lumber Company, and the Calcasieu Long Leaf Lumber Company, all of which have sawmills on the Louisiana & Pacific. The Long-Bell Lumber Company, which is a part of the same general interest, does not manufacture lumber, but markets the output of these mills. Only \$30,000 of the capital stock of the tap line was issued for cash, and the balance was subsequently distributed to its stockholders as a stock dividend. It has outstanding bonds to the amount of \$582,200, which were issued for the purpose of taking up notes payable to the various lumber companies, and covering purchases of track and equipment. All of

the tracks of the Louisiana & Pacific, as hereinafter described, were originally constructed as private logging roads by the individual lumber companies.

The Lake Charles & Northern Railroad, which is owned by the Southern Pacific, extends from De Ridder, La., southward for a distance of about 46 miles to Lake Charles. It was originally built by the R. A. Long interests as part of the Louisiana & Pacific, and was sold to the Southern Pacific, which thereupon incorporated the Lake Charles & Northern to operate the property. In the sale of the property to the Southern Pacific, however, the R. A. Long interests reserved to the Louisiana & Pacific the right of jointly operating the track between Lake Charles and De Ridder. The Louisiana & Pacific pays the Lake Charles & Northern 25 cents per train-mile for the trains that it operates over that track, and also bears a certain proportion of the station expenses; the payments aggregated for the fiscal year 1910 approximately $7,000. The two companies, as the record indicates, enjoy equal rights over the track, and in view of the price received by the R. A. Long interests from the Southern Pacific the trackage arrangement is obviously a most advantageous one.

The Louisiana & Pacific is a peculiar property. There are five separate branches or tracks not directly connected with each other, but all joining at different points the track conveyed to the Lake Charles & Northern. The five tracks may be described as follows: (1) A track connecting with the Lake Charles & Northern at De Ridder Junction, and extending 8 miles to Bundicks, which is apparently a logging camp with a company store. The mill of the Hudson River Lumber Company, in whose interest this track is operated, is at De Ridder, being within a few hundred feet of the rails of the trunk lines. (2) At Lilly Junction, a second section of the track of the tap line connects with the Lake Charles & Northern, extending therefrom about 7½ miles to a point in the woods known as Walla, where the King-Ryder Lumber Company has a commissary, and there is a small independent yellow-pine mill, owned by the Bundick Creek Lumber Company. The mill of the King-Ryder Company is at Bon Ami, on the track jointly operated by the tap line and the Lake Charles & Northern. This is a town of 2,000 people, but apparently has no other industries. (3) Two miles of incorporated track of the Louisiana & Pacific connect with the Lake Charles & Northern track at Longville, a town of 2,000 population, where the Longville Lumber Company has its mill, and a store. There are also several independent stores. (4) There are 9 miles of track connecting with the Lake Charles & Northern at Fayette, and extending to Camp Curtis, a

settlement of 200 people, where the Calcasieu Long Leaf Lumber Company has a company store, its mill being at Lake Charles. (5) A track 1 mile in length described on the record as connecting with the Lake Charles & Northern at Bridge Junction and running to Lake Charles station. Through its operating rights over the Lake Charles & Northern the tap line connects with the Kansas City Southern and the Santa Fe at De Ridder, with the Frisco at Fulton, and with the Southern Pacific, Iron Mountain and Kansas City Southern, at Lake Charles. The equipment of the Louisiana & Pacific consists of 22 locomotives, 6 cabooses, 41 freight cars, and 270 logging cars. It also owns a private car which is used in traveling around the country by its officers who hold free transportation, and who are connected with the lumber companies. The lumber companies have many miles of unincorporated logging tracks connecting with the several sections of the Louisiana & Pacific at various points. There are a number of other towns or settlements named on the record, which it is unnecessary to mention; and there is a second small independent mill, owned by the Brown Lumber Company, and located at Bannister, on the Lake Charles & Northern.

The logs are loaded by the lumber companies and switched by them over the logging spurs to the point of connection with the incorporated line. The cars are then hauled by the tap line to the mill, a distance on the average of about 30 miles, as is stated of record. No charge is made by the tap line against the lumber companies for the log movement. The tap line switches the carloads of lumber a distance of three-fourths of a mile from the mill at Lake Charles to the Southern Pacific; or a distance of a few hundred feet from the De Ridder mill to the trunk lines. It moves lumber for a distance of 18 miles from the Lake Charles mill to the Frisco; the movement from the mill at Bon Ami to the Southern Pacific at Lake Charles is 40 miles; and the lumber movement from the Longville mill to the Southern Pacific at Lake Charles is 24 miles. The average haul of the tap line on lumber movements of the controlling companies is said to be nearly 20 miles. The steel for these tracks is apparently supplied by the tap line without charge. There are written agreements under which 50 per cent of the lumber tonnage must be routed over the Frisco and 40 per cent by the Southern Pacific; but the record indicates that these obligations are not rigidly adhered to and more than 10 per cent is delivered to the other trunk lines. The total movement of lumber for the fiscal year 1910 was 243,122 tons, and the merchandise and other commodities aggregated 8,819 tons. As much as 98 per cent of the entire tonnage was supplied by the controlling interests. A few passengers are carried, the receipts from

that source for the year 1910 being $473.77. A logging train runs daily on each of the branches, and there is one "mixed train," loaded chiefly with logs and lumber, moving over the track between Lake Charles and De Ridder.

The allowances paid by the trunk lines range from 1½ to 5½ cents per 100 pounds, out of their earnings under the group lumber rate.

The annual report to the Commission for the year ending June 30, 1910, shows an operating revenue of $220,985.94, with operating expenses amounting to $145,433.69. There was an accumulated surplus on that date of $73,581.07.

In this case we have another instance of a service performed for a lumber company by a tap line claiming to be a common carrier for which no charge is made, namely, the service of hauling the logs to the several mills. For the switching service of a few hundred feet from the mill at De Ridder to the trunk lines, and three-fourths of a mile from the mill at Lake Charles to the Southern Pacific, allowances are made out of the rate of from 1½ to 5½ cents. There are other important facts of record with respect to this tap line which we have not thought necessary to include in this statement. We regard the whole arrangement as indefensible and unlawful, and see no grounds upon which any allowance may lawfully be made.

SIBLEY, LAKE BISTENEAU & SOUTHERN RAILWAY.

The Sibley, Lake Bisteneau & Southern Railway Company and the Globe Lumber Company belong to what is referred to on the record as the R. A. Long interests, a majority of the stock of both companies being owned by R. A. Long. The tap line, with the Louisiana & Pacific and the Woodworth & Louisiana Central, forms what is known as the Shreveport, Alexandria & Southwestern system.

The Sibley, Lake Bisteneau & Southern connects at Sibley, La., with the Vicksburg, Shreveport & Pacific and the Louisiana & Arkansas railways, and extends southward for about 31 miles through Webster and Bienville parishes for about 28 miles, terminating 3 miles beyond a point know as Camp Long. It apparently parallels the Louisiana & Arkansas for a considerable portion of its length. South of Camp Long there are extensive unincorporated logging tracks. The entire road, which is laid with 40 and 60 pound rails, was originally built as a private logging road, but was incorporated in 1900, with a capital stock of $100,000, all of which was issued to the lumber company in part payment for the property then acquired the valuation of which was fixed at $211,000. The tap line still owes the lumber company about $100,000. Its equipment consists of 6 locomotives, 2 passenger cars, 7 freight cars, and 106 logging cars. It will be observed, however, that three of the locomotives and all of

the freight and logging cars are leased to and used by the lumber company.

The mill is at Yellow Pine, a company town with a population of 1,200, less than 5 miles south of the junction with the trunk lines. The only other towns on the line are Sibley, the junction point, a place of about 800, and Ringgold, which is about 16 miles south of Sibley, and seems to be 5 miles from the Louisiana & Arkansas Railroad, having a population of more than 1,000, with a bank, several stores, and an independent sawmill, cotton gin, etc. It is claimed that the country tributary to the tap line is being settled; there are a number of very old farms. There are about 117,000 acres of timber reached by the tap line which is owned and controlled by the lumber company. The tap line claims to have four independent lumber shippers, the principal one shipping about 20,000 feet a day. This mill, however, is 3 miles from the tap line and its logs are hauled to the mill and its lumber to the tap line by teams.

The record indicates that about 70 per cent of its freight revenue accrued on traffic supplied by the proprietary company. During that year it handled 2,384 tons of agricultural products, moving outbound, and 1,692 tons of such freight, moving in, with more than 4,000 tons of other freight. Of the whole movement 43,899 tons was supplied by the proprietary company, and 9,762 tons was handled for others. The tap line apparently runs one "mixed" train daily in each direction on which passengers are carried. Its revenue from that source during the year 1910 aggregated $3,112.16. The freight revenue for the same period amounted to $46,646.08. The operating expenses for that year exceeded $60,000, leaving a deficit after the payment of taxes and interest of more than $20,000. But there was an accumulated surplus from previous years of more than $80,000, so that on June 30, 1910, its net surplus was $53,626.70.

The lumber company loads the logs on the cars furnished to it by the tap line and hauls them to the junction of the logging tracks with the incorporated line. They are then hauled by the tap line to the mill, a charge of $2.75 being made for the movement, when the logs reach the tap line south of Ringgold, and $2.50 per car when taken by it from points north thereof. The logs coming from north of Ringgold are hauled to the tap line with teams, being purchased from small independent producers. With the exception of a few hardwood logs shipped for export no logs have been handled by the tap line for outsiders. The tap line moves the empty cars furnished by the trunk line to the mill and switches the loaded cars back to the junction, a distance of less than 5 miles. It receives out of the rates allowances from the trunk lines ranging from 1½ to 4½ cents per 100 pounds. It at one time received as much as 7 cents per 100 pounds.

In this case the allowance paid by the connecting trunk lines on the products of the proprietary mill may not lawfully exceed 1 cent per 100 pounds.

ROOSEVELT & WESTERN RAILROAD.

The Roosevelt & Western Railroad is owned by J. B. Schuh and extends from a connection with the Iron Mountain at Roosevelt, La., for 8 miles into the timber. It has 1 locomotive, 2 box cars, 2 slab cars, and 10 logging cars. None of the equipment has safety devices except the locomotive, which has air brakes. The tap line was incorporated in 1909, when the construction was commenced, and it has capital outstanding to the amount of $15,000. The track is laid with old rails leased from the Iron Mountain for a rental of 6 per cent of the valuation.

The mill is at a point known as Lynchville, about one and three-quarter miles west of the junction with the Iron Mountain, and is operated in the name of the J. B. Schuh Lumber Company, which is not incorporated. There are no other mills or industries on the line. The lumber company holds about 96,000 acres of timber rights and there are three farms, or plantations, along the line. At the date of the hearing the tap line had been in operation only a few months and it had handled in that time about 6,000 tons of lumber for its owners. It claims to have handled 500 tons for outsiders. It does not run trains with any regularity and carries neither passengers, mail, nor express matter. It moves the logs to the mill at a charge of 1 cent per 100 pounds against the lumber company. It switches the empty and loaded cars for lumber movements for a distance of less than two miles in each direction between the mill and trunk line. Its allowance out of the published rate of the Iron Mountain is 2 cents per 100 pounds.

As the facts are thus disclosed the Roosevelt & Western clearly comes within the class of cases disposed of in our original report, and is not a common carrier with respect to the services it performs for the proprietary interests or on the product of their mills. But under the ruling in the original report the lumber rate of the Iron Mountain extends from the mill, and upon arranging with the lumber company to perform the service of moving cars to and from its line the Iron Mountain is entitled to make it a reasonable allowance out of the rate under section 15 of the act.

TIOGA & SOUTHEASTERN RAILWAY.

The Tioga & Southeastern Railway Company was incorporated in 1905, and its entire capital stock, amounting to $50,000, is held by the stockholders of the Lee Lumber Company; the two companies

have the same officers. Ten miles of the track was originally constructed by the Louis Werner Sawmill Company, from which it was acquired by the present owners in 1905, with the purchase of the sawmill at Tioga, La.

The tap line extends from a connection with the Iron Mountain at Tioga through Ems, which is on a branch line of the Louisiana Railway & Navigation Company, to Violet, a distance of 15 miles. Beyond that point the lumber company has about five miles of unincorporated logging tracks. The tap line also has several miles of spur tracks, some of which are used for logging operations in the woods. The equipment consists of 5 locomotives and 52 log cars. Two of the locomotives are leased to the lumber company for a rental of $10 per day.

The logs are loaded on the spurs and hauled by the lumber company to the junction of the unincorporated track with the tap line, from which point the tap line hauls the logs to the mill. For the service on the logs the tap line charges $5 per car where the manufactured lumber moves to a point where there are no through rates in effect with the trunk line. Where there are through rates the $5 charge is not made, but the divison allowed by the trunk line, which averages $20 per car on the lumber, is accepted by the tap line as covering the movement of the logs to the mill. Both the sawmill and the planing mill are reached directly by the Iron Mountain, so that the tap line performs no service in the movement of lumber over that route. About 10 per cent of the output of the mill is forwarded over the Louisiana Railway & Navigation Company, involving a haul by the tap line of 9 miles.

The tap line makes annual reports to the Commission. For the fiscal year ending June 30, 1910, its freight tonnage aggregated 44,782 tons, of which all but 464 tons was lumber, logs, and staves. About 99 per cent of the entire traffic was furnished by the Lee Lumber Company. No dividends have been paid, but there was an accumulated surplus on June 30, 1910, of $99,194.61. The intention is to devote the surplus, as is asserted, to extending the road toward the Mississippi River and toward a connection with the Texas & Pacific, the country to be traversed being heavily wooded and the lumber company having an interest in the timber.

The service performed for the Lee Lumber Company by its tap line is a plant service and not a service of transportation. Any allowance by the Iron Mountain, which itself moves the lumber from the mill, would be unlawful. There is no justification for an extension by the Louisiana Railway & Navigation Company of the group rate to the mill and an allowance out of that rate to the tap line for the back haul from the mill to the junction at Ems.

LOUISIANA CENTRAL RAILROAD.

The Louisiana Central Railroad Company was incorporated in 1904, and its entire capital stock, amounting to $250,000, was issued to and is now held by the stockholders of the W. R. Pickering Lumber Company, to which it is indebted for loans amounting to nearly $75,000. The two corporations are not only identical in interest but have the same officers.

The tap line consists of two separate pieces of track, about 20 miles apart. One is designated as the northern division; it connects with the Kansas City Southern at Barham, La., where the lumber company has a mill, and extends in a westwardly direction for about 9.5 miles into the timber, terminating at a point known as Bayou Toro. This track was originally constructed by the lumber company as a private logging road, and the title was transferred for stock of the railroad corporation when later formed. The lumber company has about 10 miles of unincorporated spurs connecting with this track. The lumber produced at the Barham mill is loaded on cars standing on the tracks of the Kansas City Southern, and the only service performed by the tap line is the movement of the logs to the mill.

The so-called southern division serves two mills of the lumber company, one at the junction of the tap line with the Kansas City Southern at Pickering, La., and the other about one-half mile from the junction of the tap line with the rails of the Santa Fe at Cravens. The Lake Charles & Northern uses the line of the Santa Fe through Cravens under trackage rights. The track of the Louisiana Central from Pickering to Cravens is about 19 miles in length and extends beyond the Santa Fe for a distance of about 10 miles. There are a number of logging spurs connecting with the southern division and operated by the tap line. The main track was in part constructed by the lumber company and turned over to the tap line when incorporated.

The greater portion of the lumber manufactured at the Cravens mill is hauled by the tap line for a distance of about 19 miles to Pickering and delivered to the Kansas City Southern. A few carloads from that mill move out over the Lake Charles & Northern or the Santa Fe, whose track is about one-half mile distant, and in such case the Lake Charles & Northern allows the tap line a switching charge of $2.50 a car. Substantially the entire output of the mill at Pickering moves out over the Kansas City Southern, and the record indicates that 75 per cent of the tonnage at that mill is moved by the Kansas City Southern from the mill without the aid or intervention of the tap line.

The tap line has 10 locomotives, 1 combination passenger and baggage car, 4 freight cars, 1 caboose, 5 other cars, and 166 logging cars. It has station agents at Cravens, Pickering, and Barham, who are also employees of the lumber company. It employs about 60 trackmen, who work not only on its main tracks but on the logging spurs of the southern division. The tap line runs one train daily out of Barham, which is referred to on the record as a passenger train; but its passenger earnings are insignificant, having amounted to only $83.64 in 1910. Apparently a single log train is also run with more or less regularity on the southern division. But on both divisions practically the only movement is logs and lumber of the Pickering Lumber Company. The total traffic for the year ending June 30, 1910, was 216,346 tons, of which 99 per cent was supplied by the controlling lumber company.

The Kansas City Southern allows a division of from three-fourths cent to 5½ cents per 100 pounds out of its rates on yellow-pine lumber, the maximum division being paid out of the rate of 24 cents to Kansas City. With the exception of the switching charge heretofore referred to, no divisions are accorded the tap line by the Lake Charles & Northern or the Santa Fe; and the result seems to be that those lines get scarcely any of the traffic. The lumber company is charged $1.25 per 1,000 feet, log measure, for the service performed by the tap line on the logging spurs. But no charge is made against the lumber company for the movement of the logs over the main tracks of the tap line to the several mills.

As heretofore stated, the lumber is taken from the mill at Barham, on the so-called northern division, by the trunk line itself, whose tracks apparently reach that mill; the service by the tap line of bringing the logs to the mill is purely a plant service, and any allowance by the Kansas City Southern, either to the tap line or to the lumber company, would be clearly unlawful.

There are two mills on the so-called southern division. From the mill at Pickering the Kansas City Southern itself moves the major portion of the lumber without aid by the tap line, the mill being within 1,000 feet of the Kansas City Southern tracks. We see no grounds upon which an allowance to the tap line may lawfully be made on the products of either of the mills, but an allowance may be made to the lumber company under section 15 on lumber delivered by it to the carriers at Cravens from the mill at that point. The mill at Cravens is one-half mile from the tracks of the Santa Fe, over which the Lake Charles & Northern has running rights.

NORTH LOUISIANA & GULF RAILROAD. 27

The stockholders, officers, and directors of the North Louisiana & Gulf Railroad Company bear the same relation to the Huie-Hodge

Lumber Company; and the two companies are one investment. The tap line is in two separate sections. One track connects with the Rock Island at Hodge, La., where the lumber company has a sawmill and planer, and extends westward for about 10 miles to a point known as Danville, where the lumber company has a hardwood mill. This track was originally operated as a private logging road and was taken over by the tap line, when incorporated in January, 1906. Beyond Danville there are several miles of rails at present owned and operated as an unincorporated logging road by the lumber company, but which was formerly included as a part of the North Louisiana & Gulf. The tap line deeded this track back to the lumber company in exchange for the four miles of track that now composes the other section of the incorporated tap line. This track connects with the Lousiana & Northwest Railroad at a point known as Bienville, La., and runs eastward to a point in the woods known as Walsh; it was laid by another lumber company in 1907 and was acquired by the present owners in 1909 with the purchase of the sawmill at Bienville. We understand that since the hearing several miles of additional track have been laid from Walsh to Danville, thus connecting up the two parts of the incorporated tap line. The new track also serves to reach additional timber of the lumber company.

The tap line has 5 locomotives, 1 combination car, 6 box cars, 7 flat cars, and 70 logging cars. Two of the locomotives are used by the lumber company in hauling the logs over the unincorporated tracks to Danville, the rental paid being in the form of a charge of 25 cents per 1,000 feet on the logs handled. From Danville the tap line hauls the yellow-pine logs to the mill at Hodge without charge. The tap line also hauls rough hardwood from the mill at Danville to the planing mill at Hodge; and no charge is made for this service. Some of the hardwood lumber is shipped out without planing. On shipments from the mill or planer at Hodge a part of the service is performed by the tap line and a part by the Rock Island. The same conditions exist with respect to the movements of logs and lumber at the Bienville mill on the Louisiana & Northwest. That line allows a uniform division of 2 cents per 100 pounds, while the Rock Island pays from 1½ to 4 cents per 100 pounds. Joint rates were first established by the Rock Island in 1906 and by the Louisiana & Northwest in 1909.

The annual report for the year 1910 shows a total traffic of 40,228 tons, of which 1,145 tons were merchandise and supplies, and the remainder was forest products. One logging train is run daily in each direction, on which passengers are carried, the revenue from that source for the year 1910 being less than $800, with revenues from mail

service amounting to about $340. There are one or two small shippers of staves, bolts, and ties along the line; and mention is made on the record of the proposed establishment of a salt and crushed-rock plant, which it is hoped will ship two or three carloads a day. But the traffic of the tap line, in which the lumber company is not directly interested, is very small, and the service it performs is that of a mere plant facility of the lumber company.

Each of the mills on this line is within less than 1,000 feet of the tracks of the nearest trunk line. No allowance may therefore be made out of the rate on the products of either mill. On the products of the hardwood mill a division of 2 cents may be paid by each of the connecting trunk lines, except when again milled or planed at Hodge.

MONROE & SOUTHWESTERN RAILWAY.

The Monroe Lumber Company, predecessor of the Grayling Lumber Company in the ownership and operation of a yellow-pine sawmill at Monroe, La., on the east bank of the Ouachita River and on the tracks of the Iron Mountain, built a private logging road from the opposite bank of the river into its timber. This track connects at West Monroe with the Vicksburg, Shreveport & Pacific. Subsequently, in 1904, the Monroe & Southwestern Railway Company was formed, with an authorized capitalization of $1,000,000, of which $172,000 was issued, and took over the track referred to, which is about 10 miles in length. The stockholders of the Grayling Lumber Company own the stock of the tap line, and the two companies are one and the same investment. The incorporated track includes also about 7 miles of spurs and sidings, in addition to which the lumber company has unincorporated logging spurs connecting with the tap line at various points, the steel in which belongs to the tap line. The tap line has 4 locomotives and 91 cars. The lumber company has the free use of one of the locomotives. The tap line runs two logging trains daily in each direction and claims to carry a few passengers, but its report to the Commission for the year 1910 shows no passenger revenues. For the year 1911 the revenue from that source amounted to $334.35. About 99 per cent of the whole traffic, amounting to 99,338 tons, was supplied by the proprietary company. Its entire tonnage was forest products, with the exception of 484 tons of agricultural products and 69 tons of merchandise. It is claimed that four or five carloads of staves, bolts, and ties are moved each month for outsiders. A local rate is charged on all traffic except the lumber of the controlling company. This is true of the lumber manufactured at the hardwood mill of the Riverside Lumber Company, about 1 mile from the junction with the Vicksburg, Shreve-

port & Pacific. This mill receives its logs on the river and pays the tap line $5 a car for switching its lumber to the trunk line.

As will be seen from the foregoing statement, the mill of the lumber company is served only by the tracks of the trunk line; its tap line terminates at the opposite bank of the stream. The service performed by the tap line therefore consists of moving the logs from the point of connection of the unincorporated spurs with its track to the west bank of the river. There is a cable stretched across the river which the lumber company operates and by means of which the logs are transferred from the cars on the tap line to the mill. The lumber is taken from the mill by the Iron Mountain, which allows out of its rates a division of 3 and 4 cents per 100 pounds. The Vicksburg, Shreveport & Pacific makes no rates in connection with the tap line, and no traffic of the controlling lumber company moves out over that line. In addition to the divisions received from the Iron Mountain the tap line charges the lumber company 1½ cents per 100 pounds for the movement of the logs to the river.

The annual reports filed with the Commission indicate an accumulated surplus on June 30, 1910, of nearly $25,000, which had actually been expended, however, on the improvement of the line.

This is clearly not a case in which the trunk line may lawfully make any allowance out of its published rate either to the tap line or to the lumber company.

VICTORIA, FISHER & WESTERN RAILROAD.

The Victoria, Fisher & Western Railroad Company is owned by the stockholders of the Louisiana Long Leaf Lumber Company, the stock in the two companies being held by the same persons and in the same relative proportion. They have the same officers. The railroad corporation was formed in November, 1902, and its capital stock, amounting to $300,000, was issued as a dividend to the stockholders of the lumber company in exchange for the tracks and equipment then owned and theretofore operated by the lumber company. A part of the track seems to have been constructed some 25 years ago and was acquired by the lumber company in 1900. The tap line connects with the Texas & Pacific at Victoria, La., and runs southward, crossing the Kansas City Southern at Fisher and terminating at a point known as Cain, a total distance of about 31 miles. There are about 25 miles of logging spurs and sidetracks. The tap line has 5 locomotives, 4 cabooses, 3 box cars, 1 flat car, and 105 logging cars. It does not operate any trains on regular schedule.

The lumber company has two mills, one about a mile from the junction with the Texas & Pacific at Victoria, and the other about

half a mile from tracks of the Kansas City Southern at Fisher. The Victoria mill has been in operation for about 25 years. The timber holdings of the lumber company approximate 95,000 acres, in addition to which it owns some 80,000 acres of cut-over land.

The tap line hauls the logs from the woods to the mill, making a charge of $1.50 per 1,000 feet, which is supposed to cover only the service performed on the logging spurs and not the haul over the main track. The greater portion of the lumber manufactured at Fisher is delivered to the Kansas City Southern, being switched about one-half mile by the tap line, while the greater part of the lumber produced at the mill at Victoria is moved by the tap line one mile to the Texas & Pacific. A small amount of the lumber from each mill moves over the tap line to the more distant trunk line, but the same divisions are paid by the two trunk lines from both mills.

These allowances range from three-fourths cent to 4 cents per 100 pounds; and the joint rates are the same as the rates published from adjacent mills on the trunk lines, with the exception of traffic moving to points in Texas, where 1½ cents per 100 pounds is added to the junction-point rate.

The tap line does not carry passengers; and more than 99 per cent of the total tonnage, amounting for the year 1910 to 316,676 tons, is furnished by the proprietary company. Its annual reports to the Commission indicate an accumulated surplus of $13,509.17 at the end of the fiscal year, June, 1910.

We can not recognize the right of this tap line to participate as a common carrier in joint rates on the product of the mills of the proprietary company. The lumber rate of the Kansas City Southern must be held to apply from the mill at Fisher, and the rate of the Texas & Pacific from the mill at Victoria. Each of those lines may arrange with the lumber company to perform the necessary switching service for the distance of one-half mile and one mile, respectively, and may make it a reasonable compensation under section 15.

OUACHITA & NORTHWESTERN RAILROAD.

The Ouachita & Northwestern Railroad Company was incorporated in May, 1905, and its stock was distributed by the Louisiana Central Lumber Company as a dividend to the stockholders of that company. Title to the right of way, track, and equipment theretofore owned and operated by the lumber company was turned over to the new corporation. The two companies are practically identical in their stockholders and in their officers.

The lumber company has two mills, one at Clarks and the other at Standard, La., each being about one-half mile from the track of the Iron Mountain. Each is served by rails of the Ouachita & North-

western. In other words, the tap line as described on the record consists of two separate tracks, respectively designated as the Jackson divison and as the Standard divison. The Jackson division serves the mill at Clarks and extends from the point of connection with the Iron Mountain in a northwesterly direction for about 20 miles, with logging branches aggregating 15 miles in length. This track was not completed and put in operation until September, 1910. There had been, however, a track, constructed in 1903, running southeasterly from Clarks for a distance of 14 miles. When the timber in that direction was cut out the track was taken up and the line abandoned. In doing this no consideration was given to the rights or convenience of the farmers and one or two other outside shippers in that vicinity. There was also a small lumber mill about 6 miles southeast of Clarks which shipped two or three carloads a week over that track. That mill was still in operation at the time of the hearing, and apparently had to team its lumber to the Iron Mountain. The other section of the tap line connects with the Iron Mountain at Standard, which is some miles south of Clarks, and runs for 9 miles eastward to a point known as Summerville. This track was acquired from another lumber company in 1906.

The tap line has 7 locomotives and 150 cars. Its logging-train service is apparently irregular. It hauls the logs to the mills and switches the lumber to the trunk line, which allows a division of from 2 to 4 cents per 100 pounds out of the rate, most of the traffic being subject to the maximum division. For the movement of the logs to the mill and the expense of maintaining and changing the logging spurs the tap line makes a charge of $1.50 per 1,000 feet against the lumber company. This is in addition to the division of the through rate. The outside traffic is comparatively small, amounting for the year ending June 30, 1910, to but 1,661 tons out of an aggregate movement of 412.205 tons, or a fraction of 1 per cent. The annual reports to the Commission indicate a substantial profit from its operations.

An interesting fact was developed on the hearing of this case. It appears from the testimony of its witness that an understanding was had between the Ouachita & Northwestern and the Iron Mountain respecting the payment of divisions; and the agreement on the part of the Iron Mountain to allow 4 cents per 100 pounds was accepted by the lumber company as a warrant for purchasing additional timber lying farther from the trunk line. It is frankly stated that other timber lying nearer the trunk line would have been purchased had not this concession been granted by the Iron Mountain to the tap line.

This tap line is clearly in the class of cases disposed of in our original report. Each of the mills of the proprietary company is

about one-half mile from the tracks of the Iron Mountain and the group rate therefore extends from the mills. If it performs for the Iron Mountain the service of moving the cars to and from the mills, the lumber company may have a reasonable allowance under section 15 of the act.

LAKE CHARLES RAILWAY.

The Lake Charles Railway & Navigation Company was incorporated in 1908 as a common carrier of freight only, and all but $2,000 of its capital stock, amounting to $50,000, was issued to four stockholders of the Powell Lumber Company in consideration for the logging road theretofore constructed, and which at one time had been known as the Kelly Tram, together with the rolling stock and certain boats belonging to the lumber company. The railroad corporation and the lumber company are owned by the same stockholders and have the same officers. Moreover, there is an indebtedness to the lumber company of nearly $30,000.

The track of the Lake Charles Railway & Navigation Company connects with the Iron Mountain at Edna, La., and extends from that point southward and westward to a point known as Hecker, on the Calcasieu River. There are 20 miles of incorporated railroad, in addition to which the lumber company has several miles of unincorporated spurs connecting with the main track at various points, the steel in which is furnished by the tap line. The tap line has 3 locomotives, 15 flat cars, and 50 logging cars. It also owns and operates one steamboat and two barges, which run from Hecker down the Calcasieu River to Lake Charles, a distance of about 25 miles. One log and lumber train is run over its track between Hecker and Edna daily in each direction.

The lumber company has a mill at Edna directly on the tracks of the Iron Mountain, which switches the empty and loaded cars for lumber movements from the mill. It also has a mill at Lake Charles, La., to which the Kansas City Southern, the Iron Mountain, and the Southern Pacific all have direct access, and from which they switch the loaded cars of lumber. The only service which the tap line performs for the lumber company, therefore, is the movement of the logs from the woods to the mill at Edna on the one hand, or to Hecker and thence by boat or barge to the mill at Lake Charles on the other hand. The divisions allowed by the trunk lines range from three-fourths cent to 3 cents per 100 pounds. The annual report to the Commission for the year 1910 indicates the movement of 212 tons of naval stores and 1,014 tons of merchandise and supplies, in addition to 108,700 tons of lumber. There is very little outside traffic, and the record does not disclose the existence of any independent mills on the line. The town of Hecker is said to have

a population of nearly 500, with two general stores and a turpentine plant. The lumber company has a commissary which, as we assume, took a substantial portion of the merchandise shipments moving over the tap line.

The lumber is moved directly from the mills by the trunk lines, as heretofore stated. No allowance may lawfully be paid to the tap line on account of the service which it performs for the proprietary company.

ARKANSAS SOUTHEASTERN RAILROAD.

The Arkansas Southeastern Railroad serves the mill of the Summit Lumber Company at Randolph, La., a point on the Rock Island, which passes within 150 yards of the plant. The track is laid from Randolph in a southeasterly direction for about 28 miles, to Farmerville, where a connection is made with the Iron Mountain. At a point 17 miles from the mill known as McKay an unincorporated logging road of the Summit Lumber Company connects with the tap line and on those tracks the lumber company operates logging trains, using three locomotives. The tap line itself has 2 locomotives, a combination passenger car, 18 flat cars, and 73 logging cars. The tap line was constructed by the lumber company several years before its incorporation, in 1904, which is admitted to have taken place for the purpose of obtaining divisions of through rates. The record indicates certain changes shortly prior to the hearing in the ownership of a majority of the stock of the tap line. Our understanding, however, is that the ownership of the tap line is vested in persons who are directly interested in the mill at Randolph, which it serves. In other words, the mill and tap line are still to all intents and purposes one and the same investment.

The Summit Lumber Company loads the logs on the cars and moves them with its equipment over the unincorporated tracks to the junction with the tap line; and the tap line hauls the logs to the mill without charge. The lumber is switched by the tap line from the mill to the junction, a distance of three-quarters of a mile. The Rock Island allows from 1 to 4 cents per 100 pounds out of the rates on lumber. For the year ending June 30, 1910, the shipments of the Summit Lumber Company aggregated 70,702 tons, while the traffic of outsiders was 2,469 tons. There is a small hardwood mill owned by W. F. Usrey & Company, which purchases its logs from the Summit Lumber Company; there are also a small yellow-pine mill and stave mill which use the tap line. One mixed train is run direction daily on which a few passengers are carried. The from that source for the year 1910, however, was only

$778.90. The lumber company furnishes 96 per cent of the traffic of the tap line.

This mill is within 150 yards of the Rock Island rails, and we hold that no allowance out of the rate may lawfully be made by the Rock Island. On lumber delivered by the tap line to the Iron Mountain at Farmerville a division of 2 cents may be paid to the tap line.

LOUISIANA RAILWAY.

The stockholders of the Grant Timber & Manufacturing Company own a majority if not practically all of the capital stock of the Louisiana Railway Company, and practically the only service performed by the latter is the movement of logs and lumber for the proprietary company. The two corporations have the same officers.

The track of the tap line is about 16 miles in length, connects at Grant, its eastern terminus, with the Louisiana & Arkansas, crosses the Iron Mountain at Selma, running thence westerly for several miles and turning northward, crossing the Louisiana & Arkansas, and terminating at a point in the timber known as Harrell; there are also about 14 miles of unincorporated logging tracks the steel in which is owned by the tap line, but which are laid and maintained by the lumber company. About 9 miles of the main track was purchased from prior owners for the sum of $85,000; the remainder was apparently constructed by the lumber company and turned over to the tap line, the cost being borne out of the earnings. The cost of the entire track, which is laid with light rail, and equipment, aggregated about $200,000. The tap line has 6 locomotives, 25 flat cars, and 93 logging cars.

The lumber company has two mills in operation at Selma, one immediately adjacent to the line of the Iron Mountain and the other within 300 feet of its right of way. Its timber holdings aggregate more than 100,000 acres and include certain lands where the lumber company has private logging spurs reached by the tap line by means of trackage rights over the Louisiana & Arkansas. The tap line hauls the logs all the way from the point of loading to the mill, and the trainmen unload them into the pond. A charge of $1 per 1,000 feet is made against the lumber company, which is supposed to cover the rental of the steel in the unincorporated tracks as well as the service performed by the tap line in moving the logs thereon. The loading track at one of the mills in Selma is owned in part by the Iron Mountain and in part by the lumber company. The other mill has a short spur track, less than 300 feet in length, connecting with the Iron Mountain. The record does not clearly indicate whether the locomotive of the Iron Mountain or that of the tap line places the empty cars and switches the loaded cars for lumber movements from

the mills or either of them. About one-half of the traffic of the lumber company is forwarded over the Louisiana & Arkansas, which entails a movement by the tap line of the empty car for a distance of 2¼ miles from Grant to Selma, and of the loaded car for the same distance from the mills at Selma to Grant. Each of the trunk lines publishes rates in connection with the tap line, and each makes an allowance of from 2 to 4 cents per 100 pounds. As heretofore stated, the tap line has practically no outside traffic. During the year covered by the record it moved 260,000 tons of logs for the proprietary company, and 75,848 tons, or about 3,000 carloads, of lumber.

The tap line makes annual reports to the Commission. Its capital stock amounts to $100,000, of which $75,000 was issued as a stock dividend. No cash dividends have been paid, but large sums have been taken from earnings to extend or improve the property. There was apparently a surplus on June 30, 1910, of about $80,000, against which must be balanced an indebtedness of nearly $20,000 due on open account to the lumber company.

We find on the facts disclosed that the Louisiana Railway, in the movement of the logs and lumber of the proprietary company, is a plant facility, and comes within the group of cases embraced in the original report herein. The mills at Selma are within 300 feet of the Iron Mountain; and for the reasons stated in the original report we can not recognize the propriety of any allowance for the movement of cars between the mill and the Iron Mountain tracks, although performed by the lumber company itself. Our view is, however, that for the movement of lumber from the mill to the Louisiana & Arkansas, a distance of about 2¼ miles, that company may make an allowance of a reasonable amount under section 15 of the act to the lumber company.

RED RIVER & GULF RAILROAD.

The Red River & Gulf Railroad Company was incorporated in April, 1905, and its capital stock, amounting to $101,000, was delivered to the Crowell & Spencer Lumber Company and distributed by the latter as a dividend to its stockholders. The lumber company constructed the track and deeded the property to the railroad corporation. The two companies are, and have been from their inception, identical in interest, and they have the same officers.

The tap line connects with the Iron Mountain at Long Leaf, La., and with the Rock Island, Texas & Pacific and Southern Pacific at LeCompte, the track between those points being about 13 miles in length. The timber has all been cut away along the main line; but the lumber company has an unincorporated track about 4 miles in length, connecting with the tap line and running into the

standing timber. The equipment of the tap line consists of 1 locomotive, a combination passenger and freight car, and 3 flat cars. The lumber company itself owns and operates 3 locomotives and about 50 logging cars.

The mill of the lumber company is at Long Leaf, within a quarter of a mile of the tracks of the Iron Mountain. The lumber company loads the logs on its cars in the woods, and with its engines hauls them over the unincorporated tracks and thence over the incorporated tap line to the mill under a trackage privilege, for which it pays the tap line 25 cents per 1,000 feet, log scale. In other words, the logs are moved to the mill precisely in the manner that they were before the incorporation of the tap line, with the exception that the lumber company goes through the form of paying a trackage charge. Before the incorporation practically all the lumber moved over the Iron Mountain and no divisions were paid. But at the time of the hearing the bulk of the lumber moved over the tap line to the Rock Island, a distance of over 12 miles, the divisions paid by that company ranging from 2½ cents to 4½ cents per 100 pounds. The allowance of the Iron Mountain is uniformly 3 cents, while the Southern Pacific pays 3 and 4 cents per 100 pounds. The Texas & Pacific grants no divisions.

There is an independent mill on the tap line about 5 miles from LeCompte, with a capacity of about 40,000 feet per day. It hauls its logs to the mill by wagon. The lumber traffic of the tap line for the year 1910 amounted to 37,820 tons, with 1,363 tons of other freight. The revenue from the freight was $29,576.56, in addition to which the lumber company paid $5,191.36 for trackage rights for its log trains, and the Rock Island paid $6,666.75 for the privilege of running trains loaded with gravel over a portion of the tap line. The Red River & Gulf runs one train daily in each direction, on which passengers are carried; and its revenues from passengers amounted to $1,213.40 for the year 1910. These figures are taken from the annual reports to the Commission, which show an accumulated surplus on June 30, 1910, of $6,865.74, after the payment of a 40 per cent dividend during that year, amounting to $40,400. In the year 1907 it paid a 15 per cent dividend, with 40 per cent in 1908, and 20 per cent in 1909, making a total of $116,150 distributed in four years to its stockholders, on a capitalization of $101,000.

The allowances paid here are clearly excessive and amount to a rebate to the lumber company. The allowance by the Iron Mountain to the tap line for switching the product of the mill to its rails may not lawfully exceed $2 a car; and we fix the division out of the rates that may lawfully be made by the Rock Island and other trunk lines on the products of the mill of the controlling company at Long Leaf at 2 cents per 100 pounds as a maximum.

ZWOLLE & EASTERN RAILWAY.

In the year 1899 the Sabine Lumber Company built a sawmill for the manufacture of yellow-pine lumber at Zwolle, La., within one-half mile of the tracks of the Kansas City Southern, and a planing mill immediately on those tracks. At the same time, and for the purpose of bringing the logs to its mill, the lumber company constructed several miles of track which it transferred in 1904 to a corporation then organized by it and known as the Zwolle & Eastern Railway Company. The capital stock of the new corporation, amounting to $20,000, was taken in part exchange for the track and equipment, and the balance of its value, amounting to $75,000, has since been paid for out of the earnings of the tap line. The stockholders of the lumber company own practically the entire capital stock of the tap line; and the two companies are not only identical in interest, but have the same officers and several joint employees.

The main track of the Zwolle & Eastern is 14 miles in length and extends in a southwesterly direction from Zwolle to a point known as Blue Lake. There are about 4 miles of spurs and sidetrack. The equipment consists of 3 locomotives, 1 combination passenger and baggage car, a box car, and about 60 logging cars. There are no station structures, although there are said to be several small towns or settlements along the line. Blue Lake is a logging camp. The only independent industry on the line is a small hardwood mill at a point known as Gibson, about 1 mile from the junction with the Kansas City Southern.

The logs are loaded on the cars by employees of the tap line and are hauled by it over the logging spurs and thence over its main line to the mill, a charge of $1.75 per 1,000 feet, log scale, being debited against the lumber company for the services on the logging spurs. For hauling logs over the main track from Blue Lake to Gibson the tap line charges the hardwood mill $2 per 1,000 feet, log scale. The tap line switches shipments of lumber from the sawmill to the trunk line, a distance of about one-half mile; but nearly 90 per cent of the shipments of the proprietary company are dressed lumber, which is taken by the trunk line directly from the loading track. The lumber shipments of the hardwood mill at Gibson are moved by the tap line a distance of 1 mile to the Kansas City Southern. The divisions allowed by the trunk line are from one-half cent to 4 cents per 100 pounds, averaging about 2 cents.

The statement made on the record is that the passenger revenue of the tap line amounts to $60 per month, and that there are two mixed trains moving daily in each direction on which passengers are carried. The annual reports to the Commission do not bear out this claim, however, for the fiscal year 1911, the revenue being shown

thereon as $385.15, with no revenues from passenger traffic for the preceding fiscal year. The volume of forest products exceeded 110,000 tons for the year 1910, while the inbound and outbound movements of miscellaneous material and supplies aggregated only 510 tons. The tap line has been operated at a substantial profit, its accumulated surplus on June 30, 1910, amounting to $114,516.67, the major portion of which has been utilized in the payment of its indebtedness of $75,000 to the lumber company, of which mention has already been made.

The Kansas City Southern itself removes the dressed lumber from the planing mill and we should regard any allowance on such traffic either to the tap line or to the lumber company as clearly unlawful. While about 10 per cent of the shipments are rough lumber, which is actually switched by the tap line for a distance of nearly one-half mile, we infer that the loading track of the sawmill is within a very much less distance of the rails of the Kansas City Southern, and that if that company cared to remove the cars from the sawmill it could do so with a switching movement of less than 1,000 feet. If this understanding is not correct, under the principle stated in the original report, the lumber company may have an allowance from the Kansas City Southern under section 15 for switching the rough lumber to the trunk line.

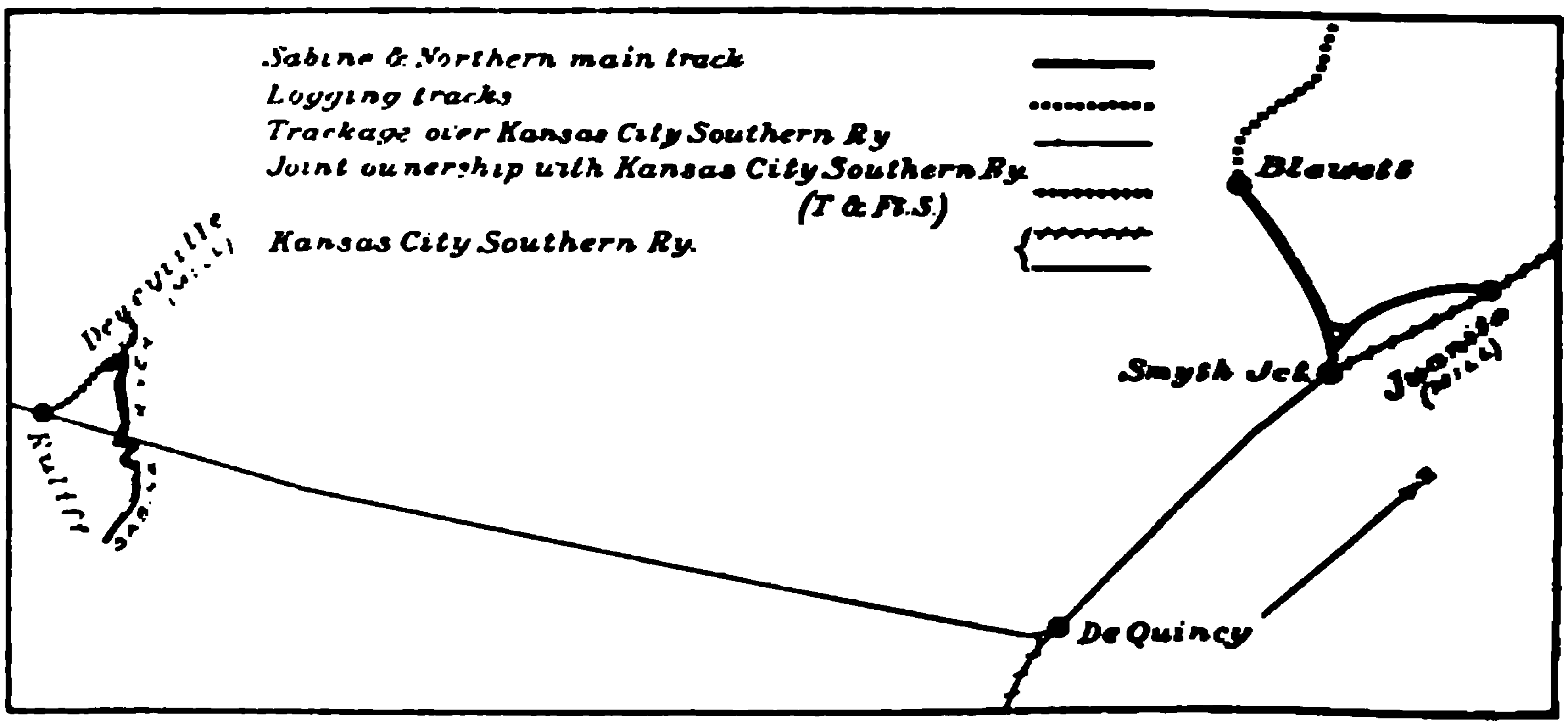
SABINE & NORTHERN RAILROAD.

The Sabine & Northern Railroad Company is controlled, through the ownership of its entire capital stock, by a lumber company known as the Sabine Tram Company, which has a mill at Juanita, La., and another at Deweyville, Tex. The lumber company has some 23,000 acres of timberland in Louisiana which is reached by the tap line, and a tract of approximately 60,000 acres in Texas. The mill at Deweyville has been in operation since 1899, but the mill at Juanita was built more recently.

The Sabine & Northern connects with the Kansas City Southern at Smyth Junction and extends westward for about 5 miles to a camp or logging town known as Blewett and having a population of about 500. From Juanita Junction, which is about 1 mile west of Smyth Junction, a track runs northward for a distance of 3½ miles parallel to and joining the Kansas City Southern at Juanita. These tracks are laid with 35 and 50 pound steel rails, and the right of way is apparently owned by the tap line.

The tap line enjoys trackage rights over the Kansas City Southern from Smyth Junction southward for 8 miles to De Quincy, and westward about 21 miles to Ruliff, on the west bank of the Sabine River in the state of Texas. From Ruliff it operates over a track 1½ miles long owned jointly by the Texarkana & Fort Smith, a part of

the Kansas City Southern system, and the Sabine Tram Company, to the mill at Deweyville. It is of interest to observe that the trackage rights in question originated in a contract entered into between the Kansas City Southern and the Sabine Tram Company, before the opening of the mill at Juanita and the building of the tracks into that point; that this contract was subsequently assigned to the tap line when organized; and that it is limited to the movement by the tap line over the Kansas City Southern of trainloads of logs belonging to the Sabine Tram Company. The joint track from Ruliff to Deweyville was laid in 1899 and is used by the Sabine & Northern simply for the movement of logs to the lumber company's mill at that point; the Texarkana & Fort Smith apparently furnishes a general freight service for Deweyville, a town of 1,500 inhabitants. The right of way for the joint track was furnished by the lumber com-



pany, which did the grading and furnished the ties, while the Texarkana & Fort Smith supplied and laid the steel.

The tap line was incorporated in February, 1906, for the purpose, as is admitted of record, of legalizing divisions from the Kansas City Southern. Its equipment consists of one locomotive, one flat car, and a caboose, together with a second locomotive and 70 log cars which it rents from the lumber company. The locomotives have proper safety appliances.

The lumber company has unincorporated logging spurs aggregating in length about 16 miles and extending into the timber from the terminus of the incorporated tap line at the logging camp known as Blewett. The lumber company operates these spurs and with its own power moves the logs to Blewett. They are then taken by the locomotive of the tap line to the mill at Juanita, no charge being made against the lumber company for this service. The lum-
duced at the Juanita mill is loaded directly on the tracks of
s City Southern, which switches the cars to and from the

mill. The tap line also takes carloads of logs at Blewett and hauls them over its own rails to Smyth Junction, and thence, under the trackage rights heretofore referred to, over the Kansas City Southern to Ruliff and the joint track to Deweyville. It pays the Kansas City Southern $1.75 per car for the trackage right and makes a charge against the lumber company of $5.25 per car for the entire movement of the logs from Blewett to Deweyville. This charge, however, is subsequently refunded by the tap line on four carloads of logs for each carload of lumber shipped out, the rates established by the Kansas City Southern and participated in by the tap line being on the milling-in-transit plan. The lumber produced at the Deweyville mill is moved by the Texarkana & Fort Smith from the mill. It will be seen therefore that in the case of each of the two mills the tap line hauls the logs but does not haul the lumber. It receives an allowance from the Kansas City Southern of from three-fourths cent to 3 cents per 100 pounds, except to destinations in the state of Texas, and to certain other territories where no division is allowed. It is claimed that the bulk of the business goes to points where the Sabine & Northern has no allowances, but the proof is not definite on this point.

The traffic of the Sabine & Northern consists almost entirely of the logs of the Sabine Tram Company and supplies for its logging camp and employees. Its whole tonnage for the year 1910, exclusive of forest products, was 1,435 tons, of which 235 tons was coal and 279 tons iron and steel. All of this freight was inbound, nothing being moved out except logs. No charge is made for such few passengers as are carried, and it has no special facilities for the handling of traffic for the public if any were offered.

It files annual reports with the Commission, from which it appears that the operating expenses shown on its books are slightly in excess of the revenues.

The Kansas City Southern or its subsidiary line, the Texarkana & Fort Smith, takes the manufactured lumber from both of the mills of the proprietary company. Upon the facts of the case, therefore, no allowance may lawfully be made out of the rates on the traffic of these mills. The trackage right acquired over the Kansas City Southern crosses the state line; although assigned by the lumber company to its tap line, the agreement limits the right to the logs of the controlling lumber company. This we regard as of doubtful validity.

TREMONT & GULF RAILWAY.

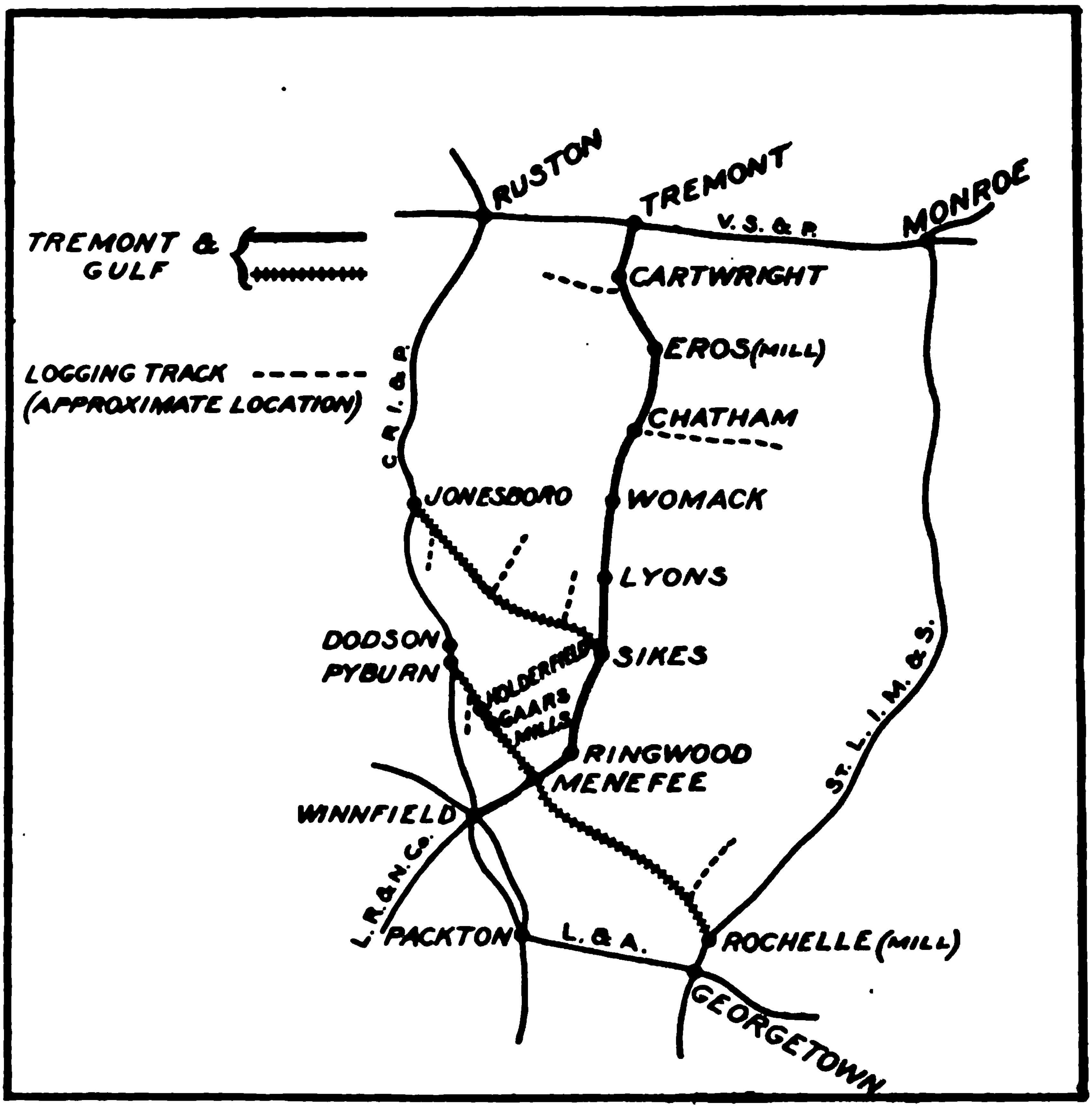
The main line of the Tremont & Gulf Railway extends from a connection with the Vicksburg, Shreveport & Pacific at Tremont, La., southward for a distance of practically 50 miles to Winnfield, La., a town of 4,000 people, with two banks, a number of

stores, and several mills and commercial enterprises, where it connects with the Rock Island, Louisiana & Arkansas, and Louisiana Railway & Navigation Company. It is laid with 60-pound steel rails, with a maximum grade of 1 per cent and a maximum curvature of 4°; its bridges are substantial; it is equipped with water tanks, coal chutes; and has telephone and telegraph lines for the dispatching of its trains. It has 6 agency stations, with 4 substantial depot buildings, costing from $200 to $7,000 each; and 30 section houses, 3 scales, a freight warehouse, etc. It also has 1 passenger and 3 freight locomotives; 3 combination coaches and passenger cars; 148 box cars; 50 flat cars, a pile driver, and cabooses; and its equipment has the necessary safety appliances. There are 18 or 20 men employed in its train crews and it has over 100 section or track men. It also has a full set of general officers, including a vice president, general superintendent, and general freight and passenger agent. It has a daily passenger train, consisting of a combination baggage, mail, and express car, and passenger coach, which is scheduled to make the 50 miles from Winnfield to Tremont in a little over two hours. It also operates a freight service as the traffic requires. It reports a passenger revenue of $17,000 for the year 1910. In addition to the town of Winnfield, which is its southern terminus, there are seven or eight small settlements along its line to and from which some traffic is hauled for the public and at which are located several small independent mills. The country is not well developed agriculturally and there are only occasional shipments of cotton, peanuts, and cattle for the farmers. Out of a total freight movement of 191,374 tons during the fiscal year 1910, 167,270 tons were forest products, of which the major portion was supplied by the mills of the Tremont Lumber Company. It is stated that the shipments of that company average not less than 450 carloads per month, while the independent mills ship about 95 carloads. For the tap line itself the claim is made that more than 72.6 per cent of its revenue is earned on lumber and merchandise handled for the account of the Tremont Lumber Company, while as much as 27.4 per cent is for other interests.

The Tremont & Gulf Railway also owns and operates a branch line, crossing its main line at a point about 5 miles north of Winnfield, connecting with the Rock Island at Pyburn and running for a distance of about 29 miles eastward to a connection with the Iron Moutain known as Rochelle. It also operates a branch leased from the Tremont Lumber Company and extending from a junction with the Rock Island at Jonesboro about 20 miles eastward to a connection with the tap line at Sykes. There are doubtless logging camps along the branch lines; there is a single small independent sawmill on

each branch; but there are neither towns nor settlements; and apparently these branch lines are used primarily for the benefit of the Tremont Lumber Company.

The capital stock of the Tremont & Gulf Railway Company, of which $2,000,000 has been issued, is held by the Southern Investment Company, which also owns the stock of the Tremont Lumber Company, and other lumber industries elsewhere. We find, therefore, an identity of interest between the tap line and the Tremont Lumber



Company, which has vast timber holdings along the tap line, amounting at the date of the hearing to approximately 235,000 acres. The lumber company also has three large mills at present in operation and two that have ceased running.

The principal mill is located a few hundred feet from the Iron Mountain right of way at Rochelle, on one of the branch lines heretofore mentioned, and about 40 per cent of the total manufactured output of the Tremont Lumber Company is shipped therefrom.

The balance of the output is about evenly divided between its mill at Eros, which is on the main road of the tap line, about 11 miles south of Tremont, and the mill at Jonesboro, from which there is a switching movement to the Rock Island of about 3,000 feet over the branch which the tap line operates under lease from the lumber company. The lumber from each of these mills is not routed over the line of the nearest trunk-line connection, but is distributed among the various trunk lines, the Rock Island getting about 35 per cent of the whole traffic, the Iron Mountain 20 per cent, the V., S. & P. 33⅓ per cent, and the remainder moving over the Louisiana Railway & Navigation Company from Winnfield. It is said that the average haul over the Tremont & Gulf on the finished lumber is about 25 miles.

In addition to the incorporated line, including, as heretofore stated, 20 miles of branch lines leased from the Tremont Lumber Company, the latter company owns and operates upward of 50 miles of logging road and spurs reaching into its extensive timber tracts. They connect with the incorporated tap line at various points. The lumber company has trackage rights over the railroad, under and by virtue of which it moves logging trains from its various logging spurs in the timber to its several mills. In other words, the incorporated tap line does not haul the logs of the lumber company to its mills; and it made no charge against the lumber company for the trackage rights until after the hearing. It now gets a trackage toll of 35 cents per train-mile. It seems that the understanding had previously been that the incorporated tap line was sufficiently remunerated by its divisions on the manufactured lumber to warrant it in giving away the trackage privilege. In the operation of the private logging spurs and the movement of its log trains over the incorporated line, the lumber company uses 9 or 10 locomotives; it also has more than 100 logging cars.

For the movements of lumber from the various mills to the trunk-line connections the tap line receives an allowance or division of from 2.4 cents to 6 cents per 100 pounds. The lumber is billed as originating at the respective mills, there being no milling-in-transit arrangement, as the logs are brought into the mills by the lumber company itself. An allowance of 6 cents for its average haul of 25 miles yields a revenue of nearly 5 cents a ton-mile. The empty car is furnished by the connecting trunk line.

In spite of the comparative completeness of its equipment and organization it is perfectly apparent that this tap line is a facility of the Tremont Lumber Company. That is the way it has been used. The lumber company freely used its entire trackage to haul its logs without cost until after the hearing, and now enjoys trackage rights

at a low toll per train-mile over its total mileage. This we regard as unlawful. We do not understand upon what principle a shipper may use the rails of a line that calls itself a common carrier either free of charge or on terms that are not published and offered to other shippers.

On the brief filed in behalf of this tap line it is said that if it be contended that the tap line is not entitled to a division out of the rate on shipments delivered to the Iron Mountain from the Rochelle mill or on shipments delivered to the Rock Island at Pyburn from the mill at that point—

It must be remembered that the strategic position of this company is such that five railway lines compete for its traffic. There is no legal reason why a railway line should not sell its traffic to that competitor which gives it the best division. The through rates remaining unchanged, the public is not interested.

This view, however, overlooks every essential element in the controversy. The principal mill of the lumber company is at Rochelle and is within a thousand feet of the Iron Mountain. The mill at Jonesboro is about 3,000 feet from the Rock Island, and the switch track reaching it is the property of the lumber company, the tap line using it under lease. Under these circumstances divisions out of the rate, amounting in some cases to 6 cents per 100 pounds, on the products of those mills when shipped out over those connections are unlawful rebates. This is less true only in degree of the divisions out of the rate on the products of the other mills. Nothing should be paid by the Iron Mountain on the products of the Rochelle mill or by the Rock Island on the products of the lumber company's mill at Jonesboro in excess of a reasonable switching charge, which we fix at $1.50 a car. On the product of the mill at Eros routed through Tremont a division of 1½ cents may be made out of the rate. On the traffic of that mill moved through Sykes to junctions with other trunk lines, a division out of the rate of 2 cents per 100 pounds may be made. On the products of the mill at Jonesboro moved through Sykes to Rochelle or to Tremont or delivered to the Louisiana Railway & Navigation Company at Winnfield, a division of 2 cents may be paid out of the rate. On the products of the mill at Rochelle, delivered to the Rock Island at Winnfield, Pyburn, or Jonesboro, or to the Vicksburg, Shreveport & Pacific at Tremont, a like division may be made out of the rate.

NACOGDOCHES & SOUTHEASTERN RAILROAD.

The Nacogdoches & Southeastern Railroad is one of the tap lines of the Frost-Johnson Lumber Company, having been acquired by that company in 1910, when it purchased the mill of the Hayward

Lumber Company, at Hayward, Tex. The tap line was incorporated in 1904 and has capital outstanding to the amount of $245,400, which is in the hands of the stockholders of the Frost-Johnson Company. The track connects with the Texas & New Orleans Railroad at Hayward and extends through the timber to a point known in the record as Woden. Since the hearing an additional mile of the track has been put in operation westbound, from Hayward to Nacogdoches, and connection thus effected with the Houston East & West Texas. The entire length of the track operated, including sidings, is about 17 miles. It has 2 locomotives, 1 combination passenger car, 8 freight cars, and 54 logging cars. In addition to the tracks described, the lumber company has 15 miles of unincorporated logging spurs, on which it operates 1 locomotive that it owns and 1 leased from the tap line.

The tap line runs one train daily in each direction and carries a few passengers, its revenue from that source during 1910 being $322. The logs are hauled to the mill by the lumber company, which enjoys trackage rights for that purpose over the tap line, a yearly rental of $1,000 or $1,500 being paid to the tap line. The tap line switches the cars for lumber shipments for a distance of about one-quarter of a mile to the Texas & New Orleans or about one and a quarter miles to the Houston East & West Texas. There is one other small sawmill on the line the lumber traffic of which is hauled a distance of about 10 miles by the tap line, but more than 93 per cent of the lumber traffic for the year 1910 was handled for the Frost-Johnson Company, which supplied 88 per cent of the entire tonnage of the tap line, in addition to using the tracks for its own logging trains.

No allowance may be made out of the rate by the Texas & New Orleans on the products of the mill of the controlling company, which, as stated, is within a few hundred feet of its rails. For switching the products of the mill to its rails at Nacogdoches the Houston East & West Texas may allow the tap line out of the rate a reasonable switching charge, which we fix at $1.50 a car.

TEXAS SOUTHEASTERN RAILROAD.

The Texas Southeastern Railroad was originally constructed by the Southern Pine Lumber Company as a private logging road, but was incorporated in 1900 with a capital stock of $250,000, of which $238,900 has been issued and is owned by the stockholders of the lumber company. The tap line owes the lumber company $365,000.

The mills of the lumber company are at Diboll, on the track of the tap line, some 3,000 feet or more from the line of the Houston East & West Texas. The tap line runs northward from that point

for a distance of 18 miles to Neff, where a connection is had with the Eastern Texas. There is also a track nearly 10 miles in length branching out from the so-called main line and terminating at Lufkin, a point on the Houston East & West Texas and the Cotton Belt. At Vair the Texas Southeastern meets the Groveton, Lufkin & Northern, another tap line that is a party to this record, which enjoys trackage rights over the Texas Southeastern to Lufkin. For this trackage right the Texas Southeastern receives from the Groveton, Lufkin & Northern an annual rental of $450 per mile, together with a proportion of the maintenance expense. The lumber company has several miles of logging tracks connecting with the incorporated road at Vair, but these spurs are operated for it by the tap line.

The Texas Southeastern has 4 locomotives, 1 caboose, 1 combination passenger and baggage car, 10 box cars, and 84 freight cars. Its regular service consists of one "mixed train" moving daily in each direction, on which passengers are carried.

The lumber company loads the logs and assembles the loaded cars on the unincorporated spurs; and from the assembling point they are moved by the tap line to the mill, a charge of $2.50 being made where the movement is less than 10 miles, and $3 per car where it is more than 10 and less than 20 miles. On lumber from the mill routed over the Houston East & West Texas through Diboll, the tap line performs a switching movement of from 3,000 to 8,000 feet. But 95 per cent of the lumber is said to move out through Lufkin, entailing a haul by the tap line of about 17 miles. Most of the traffic is delivered at Lufkin to the Cotton Belt, but about 15 per cent is taken at Lufkin by the Houston East & West Texas. The divisions accorded by the last-named trunk line are on a percentage basis and average about 3 cents per 100 pounds. But on traffic moving to Cairo, for example, the allowance for the haul of 17 miles is 4 cents per 100 pounds, while the trunk lines for their haul of 640 miles retain 12 cents. The Cotton Belt allows from 2 to 4 cents per 100 pounds.

During the calendar year 1910 the tap line moved 58,458 tons of lumber and ties, most of which was supplied by the proprietary company. It also handled 2,200 tons of miscellaneous freight, of which about 50 per cent was supplied by the controlling interests. Its annual report for the fiscal year ending June 30, 1910, shows a total revenue of $98,543.91, of which $2,722.01 was receipts from passenger service. While the tap line keeps separate accounts, the statement made of record is that the lumber company acts as its financial agent and supplies all the funds needed. An accumulated surplus of $58,538.88 was shown on the books on June 30, 1910, but this had been expended in betterments.

The lumber rates of the Houston East & West Texas must be held to extend from the mill, which as heretofore stated is about 3,000 feet from its line, and it may pay the tap line a switching charge of $2 per car for handling the products of the mill to its rails; when the products move out over the tap line to other trunk-line connections they may allow the tap line a division out of the rate not exceeding 2 cents per 100 pounds.

TIMPSON & HENDERSON RAILWAY.

The mill of the Ragley Lumber Company was built in 1900 at Ragley, Tex., and about 10 miles of track laid to a connection with the Houston East & West Texas and the Texas & Gulf railways at Timpson. The following year the track was incorporated as the Timpson & Northwestern Railway Company. The lumber company retained the ownership of, or constructed, about 12 miles of additional track extending northwest from Ragley into the timber. In August, 1909, a new corporation was formed, known as the Timpson & Henderson Railway Company, about 60 per cent of the stock of which was issued to and is held by the stockholders of the Ragley Lumber Company; about 40 per cent was taken by citizens of Henderson. The new corporation not only took over the track of its predecessor, but also the 12 miles of logging road from Ragley to Pine Hill. The track was extended about 12 miles into Henderson, so that the tap line as in operation at the time of the hearing was 34 miles in length, beginning at Timpson and terminating at Henderson, where a connection is made with the International & Great Northern. In addition to the mill of the Ragley Lumber Company there are two small mills near Pine Hill, and a planing mill at a point known as Long Branch. There are also four small towns or settlements, each having one or more stores, and two of them having banks. Timpson and Henderson, the terminal points, each has a population of 3,000 or 4,000.

In addition to the capital stock, amounting to $250,000, mention should be made of an indebtedness by the tap line to its president, who is also president of the Ragley Lumber Company, of nearly $50,000. The two companies have the same officers.

In addition to the tracks already referred to the lumber company at the time of the hearing had unincorporated logging tracks connecting with the tap line near Pine Hill and extending into the timber. It hauled the logs with its own engines over this track to the incorporated line, and thence under a trackage right for which it paid 25 cents per train-mile, to the mill. The tap line moved the lumber from the mill to the trunk lines, a distance of 10 miles in the case of shipments routed through Timpson, or a distance of 25 miles

on traffic moving through Henderson and over the International & Great Northern. It receives a division of from 3 to 4 cents per 100 pounds from the Houston East & West Texas, and from 2 to 3 cents per 100 pounds from the International & Great Northern. The Texas & Gulf is a part of the Santa Fe system, and has made no allowances to this tap line since 1908; it formerly paid 1½ cents per 100 pounds. The statement made on the hearing was that the timber holdings of the lumber company would be entirely cut out within another year. We are now advised that the lumbering operations of this company will be brought to a conclusion within 60 days. We are also advised that one or two other new independent mills have recently been erected in proximity to this tap line, in which neither the Ragley Lumber Company nor any of its stockholders has any interest.

There are also joint class rates with the trunk lines and some commodity rates, out of which the tap line receives, for example, a division of 23 cents per bale on cotton destined to Houston and Galveston when moving through Timpson, and 20 cents through Henderson. In the calendar year 1910 it handled 1,029 carloads of lumber, of which 506 carloads belonged to the controlling lumber company. It also handled 15,274 tons of miscellaneous freight, consisting chiefly of grain and grain products, fertilizer, and cotton. It does not file tariffs with the Commission, but is a party to and concurs in tariffs issued by the trunk lines naming joint rates to and from points on its track. It runs one "mixed" train daily in each direction on a regular schedule and its receipts for passenger traffic for the calendar year 1910 are said to approximate $11,000.

The Timpson & Henderson makes annual reports and claims to keep its accounts in accordance with the rulings of the Commission.

In this case we hold that the connecting carriers may properly allow a division out of the rate on the products of the mill not exceeding, however, 2 cents per 100 pounds.

SHREVEPORT, HOUSTON & GULF RAILROAD.

The Shreveport, Houston & Gulf Railroad Company was incorporated in 1906, and its stock, amounting to $50,000, is owned by the stockholders of the Carter-Kelly Lumber Company, to which it is also indebted in the sum of $30,000. The two companies are identical in interest and have the same officers. The tap line runs for a distance of nine miles from a connection with the Texas & New Orleans and Cotton Belt at Prestridge, Tex., to the mill at Manning. It also operates for a distance of one and three-fourths of a mile under trackage rights over the Cotton Belt. The equipment consists of 4 locomotives, 1 passenger coach, 1 combination mail, bag-

gage, and express car, and 32 freight cars. But 3 of the locomotives and 31 flat cars are leased to the lumber company and used by it for the operation of its logging tracks, which aggregate 7 miles in length and extend from the mill into the timber.

The tap line runs two lumber trains daily in each direction on which passengers, mail, and express matter are handled. Its passenger revenue for the year 1910 was $2,978.20; its revenue on express matter was $146.87, and on mail transported, $384.75. Its freight revenues for the same year amounted to $21,955.02. Although it participates in joint class rates less than 3 per cent of its freight traffic is supplied by others than the proprietary company. The lumber company itself moves the logs to the mill; and the tap line hauls the lumber from the mill to the trunk lines, receiving from the Cotton Belt a uniform division of 4 cents per 100 pounds and from the Texas & New Orleans 3 and 4 cents per 100 pounds.

The annual reports to the Commission indicate that the tap line had on June 30, 1910, a surplus of $21,541.67.

Out of the lumber rates the trunk lines may pay to this tap line on the products of the mill of the controlling company at Manning a division of 1½ cents per 100 pounds.

GROVETON, LUFKIN & NORTHERN RAILWAY.

The mills of the Trinity County Lumber Company are at Groveton, Tex., a point on the Missouri, Kansas & Texas Railway, and for many years its logs were brought in over a narrow-gauge track constructed for that purpose and running from the mill southward to the timber. The record indicates that the facilities and service of the trunk line were not entirely satisfactory, and to secure another outlet for its products the lumber company therefore built a standard gauge road running northward to Vair, Tex., where it joins the Texas Southeastern, another tap line. When completed, the tap line was turned over to a corporation organized in 1908, under the Texas laws, known as the Groveton, Lufkin & Northern Railway Company, capital stock to the amount of $50,000 and bonds for $137,000 being issued to the lumber company for the completed road. From Vair to Lufkin the tap line enjoys trackage rights over the Texas Southeastern and as a result is enabled to reach the Houston East & West Texas and the Cotton Belt, which now receive a substantial portion of the output of the mills. The tap line has 1 locomotive, 1 passenger and 1 combination car, 8 box cars, and 21 flat cars.

The lumber company has about 20 miles of unincorporated logging tracks connecting with the tap line about 1½ miles from Groveton. The lumber company hauls the logs over these tracks and over the

tap line to the mill, a distance of about a mile. When lumber is shipped out over the Missouri, Kansas & Texas the tap line switches the cars between the mill and the interchange track, a distance of about 1 mile. The tonnage delivered to the other trunk lines is hauled by the Groveton, Lufkin & Northern about 20 miles to Vair, the terminal of its own rails, and thence over the tracks of the Texas Southeastern a distance of about 13 miles to Lufkin. It receives divisions of from 1 to 5 cents per 100 pounds out of the joint rates on lumber.

The Groveton, Lufkin & Northern claims to have a large outside tonnage. It operates a mixed train daily in each direction between Groveton and Lufkin, and its passenger revenues for the fiscal year 1910 exceeded $12,000, in addition to which its income from mail and express was about $1,200. During that year its total freight revenue was $43,075.72, of which about $33,000 accrued on traffic furnished by the Trinity County Lumber Company. It hauled during that period 8,175 tons of freight other than lumber, of which 2,422 tons was agricultural products and merchandise, outbound. The volume of its lumber movement for the same period exceeded 52,000 tons.

In this case we find that, on the products of the mill of the controlling company near Groveton, the Missouri, Kansas & Texas may lawfully pay the tap line a switching charge of $2 per car, and that the other trunk lines may pay divisions out of the rate not exceeding 2 cents per 100 pounds.

MOSCOW, CAMDEN & SAN AUGUSTINE RAILWAY.

The Moscow, Camden & San Augustine Railway Company was incorporated in 1898, and its capital stock, of which $50,000 has been issued, is owned by W. T. Carter & Brother, a copartnership, the members of which are the officers of the railroad company. The tap line extends from a connection with the Houston East & West Texas at Moscow, Tex., in an easterly direction for 7 miles to the mill of the lumber company at Camden. From that point there is an unincorporated logging track 12 miles in length running to the timber. The tap line has 1 locomotive, 1 passenger car, and 16 freight cars.

The lumber company hauls the logs to the mill. The tap line hauls the lumber from the mill to the trunk line at Moscow, a distance, as heretofore stated, of 7 miles, receiving a division out of the joint rates of from 1 to 4 cents per 100 pounds. The tap line also participates in joint rates with the trunk line on class freight and on grain, the divisions varying from 2 to 12 cents per 100 pounds. There are said to be 1,500 people living within a few miles of Camden who are not connected with the lumber company but use the facilities of the tap line. Camden is a sawmill town with a company store or commissary. The only independent mill served by the line is a shingle

mill which ships three or four carloads a year. About 95 per cent of the traffic of the tap line is supplied by the proprietary company. The freight other than lumber handled by the tap line during the year 1910 amounted to 1,305 tons, but a substantial portion of this freight was consigned to the commissary of the lumber company. A train of four or five freight cars and a coach is run daily in each direction on which passengers are carried, the revenue from that traffic during the year 1910 amounting to less than $1,000. The tap line has no station buildings, but it is explained that passengers wait for the train in the company store at Camden. Apparently the only facility available for shippers is a loading platform for cotton at Camden.

In this case we are of the opinion that an allowance out of the rate of 1½ cents per 100 pounds may lawfully be paid to the Moscow, Camden & San Augustine on the products of the mill of the proprietary company.

TRINITY VALLEY & NORTHERN RAILWAY.

The Trinity Valley & Northern Railway Company was incorporated in 1906, with a capital stock of $25,000, which is held by the stockholders of the Dayton Lumber Company. The tap line is indebted to that company in a sum exceeding $60,000, upon which interest, at the rate of 8 per cent, is unpaid.

The tap line extends from a connection with the Texas & New Orleans Railroad at Dayton, Tex., in a northeasterly direction to Fouts, a distance of 10 miles. There is also an extension of about 8 miles from Fouts which was not yet in operation by the tap line at the time of the hearing, but over which the lumber company was running logging trains. The tap line connects at Fullerton with the Beaumont, Sour Lake & Western, a part of the Frisco system. The equipment consists of 1 locomotive, 1 passenger coach, 7 box and 8 flat cars. Two mixed freight and passenger trains move daily in each direction. The passenger, mail, and express revenue for the year 1910 was $2,642.70, and of its freight revenue about 10 per cent accrued on traffic supplied by others than the proprietary company.

The mill is at Ladd, about 1 mile from the Texas & New Orleans and nearly 5 miles from the Frisco. The lumber company hauls the logs to the mill over unincorporated tracks that are laid and maintained for it and at its expense by the tap line and over a portion of the incorporated line under a trackage right for which it pays the tap line $1 per train-mile. The tap line moves the carloads of lumber from the mill to the Texas & New Orleans, a distance of less than a mile, or 5 miles to the Frisco. Divisions are allowed by both trunk lines, the average being about 2¼ cents per 100 pounds. This was [illegible]ted on the hearing.

The lumber company moved to its mill during the year 1910 about 32,000 tons of logs and shipped out about 20,000 tons of lumber. About 8,000 tons of ties, stave bolts, and wood were handled for outside shippers during the same period, as is claimed. There are no other mills on the tap line, although there are one or two tie camps and a few farms.

The tap line makes annual reports to the Commission, from which it appears that on June 30, 1910, there was an accumulated surplus of $4,886.08.

In this case we think that, with respect to the products of the mill of the lumber company, any division out of the rate to the tap line in excess of 1 cent per 100 pounds would be unlawful. We fix that as the maximum.

TRINITY VALLEY SOUTHERN RAILROAD.

In 1898 the Columbia Lumber Company built 6 miles of track from its mill at Oakhurst, Tex., westward to a connection with the International & Great Northern Railroad at Dodge, Tex. This track was known as the Trinity Valley Railroad until 1901, when the Trinity Valley Southern Railroad Company was incorporated. At that time the Palmetto Lumber Company, having some timber interests in the vicinity, had a sawmill at a point known as Palmetto, within 2 miles of the tap line with which it was connected by a private track. In the year 1909 A. C. Ford, president of the Palmetto Lumber Company, and W. S. Gibbs, a banker at Huntsville, Tex., purchased the timber and mill of the Columbia Lumber Company, together with the railroad property known as the Trinity Valley Southern. Title to the latter was taken by Gibbs, who had no stock in the Palmetto Lumber Company, but held its bonds to the extent of $200,000. It is said that these bonds were liquidated by the Palmetto Lumber Company shortly prior to the hearing in exchange for timber holdings in another part of the state, which it turned over to Gibbs. The mill and timber acquired from the Columbia Lumber Company was taken in the name of the Palmetto Lumber Company. The officers of the Palmetto Lumber Company are officers of the tap line, and the tap line is operated primarily as a facility of the Palmetto Lumber Company. It may be well to add that the record indicates that the lumber company originally purchased its timber holdings from Gibbs. The capital stock, as shown on the annual report to the Commission, is $20,000. The record, however, mentions the capitalization as $200,000.

The mill of the Palmetto Lumber Company is at Oakhurst, a company town with a commissary, 6 miles from the trunk line. The lum-

ber company has unincorporated tracks aggregating in length about 20 miles, connecting with the tap line at various points and extending into the timber. One or more of these tracks run directly from the mill into the timber. The lumber company hauls the logs to the mill with locomotives and cars which it owns and operates. The service performed by the tap line is limited to the movement of lumber, in cars furnished by the trunk line, from the mill to the junction point, Dodge. For this purpose it operates a daily train in each direction, in which there is a combination passenger and baggage car carrying passengers, express matter, and the mails. The tap line has two locomotives, but no freight cars of any description.

The divisions allowed by the trunk line out of the rates on yellow pine lumber vary from 2 to 5 cents per 100 pounds, being 30 per cent of the total proportion accruing to the International & Great Northern. Out of joint class and commodity rates that are in effect with the trunk line to St. Louis and Kansas City, the tap line receives a division of 10 per cent.

The annual report to the Commission for the year ending June 30, 1910, indicates a movement of 27,288 tons of lumber and forest products, all of which was apparently supplied by the Palmetto Lumber Company. There were 2,964 tons of other freight, of which 210 tons moved outbound, and the remainder came in. Apparently a substantial proportion, if not all, of the inbound tonnage was merchandise and supplies used by the lumber company, its commissary, or its employees. The revenues from passengers for the same year amounted to $1,330, and from mail and express matter $685.92. There was a small profit from the operation of the road for that year which, added to the surplus from previous years enabled it to pay a dividend of $2,000 and have a net surplus on June 30, 1910, of $3,311.28.

The officers of the tap line, who are officers also of the lumber company, receive and use free passes over the trunk lines.

We fix 1 cent per 100 pounds as the maximum division that may lawfully be paid out of the rate to this tap line on the products of the mill of the controlling company.

CARO NORTHERN RAILWAY.

The Caro Northern Railway Company was incorporated on September 15, 1906, under the laws of Texas. It is controlled by the stockholders of the Saner-Whitman Lumber Company, through the ownership of practically the entire capital stock, amounting to $100,000. There are no bonds. The president and general manager of the railroad are also officers of the lumber company.

It extends from a connection with the Texas & New Orleans Railroad at Caro, Tex., in a general northerly direction about 18 miles to Mount Enterprise. The equipment consists of 2 locomotives, 1 passenger car, and 2 box cars. The lumber company owns separate equipment, consisting of locomotives and logging cars.

The mill of the lumber company is located at a point called Wydeck, about one-half mile from the junction. There are also a number of sawmills and cotton gins along the line.

The tap line operates one mixed train in each direction daily on regular schedule, and handles passengers, mail, and express. The passenger revenue for the last fiscal year was about $1,700. For the year ending June 30, 1910, the total traffic handled was 1,348 carloads of lumber, of which 897 cars were supplied by the controlling interests and 451 cars by others, and 294 carloads of traffic other than lumber, of which 98 cars were supplied by the controlling interests and 196 cars by others.

The lumber company hauls the logs from the loading point on the logging spurs to the mill under trackage rights over the tap line, for which it pays the tap line $4 per train for the round trip, which amounts to approximately 33⅓ cents per car for the average train of 12 cars. On lumber shipments, the tap line handles the empty and loaded cars between the mill and the junction, a distance of six-tenths of a mile. For outbound shipments of lumber, bills of lading and waybills are issued by the agent of the tap line at Wydeck.

It receives divisions from the Texas & New Orleans on lumber of from three-fourths of a cent to 3 cents on interstate business, and from three-fourths of a cent to 4 cents on state business. On through class rates applying to and from points on the tap line, the tap line receives 12½ per cent of the St. Louis or Missouri River rate, which amounts to from 2 cents to 2½ cents per 100 pounds.

The annual report for the year 1910 shows a total freight revenue of $21,085.31; passenger, $1,538.18; mail, $499.44; express, $458.28; it received from the lumber company for trackage rights, $1,481.50; or a total operating revenue of $25,062.71. The operating expenses were $24,443.55 and the net operating revenue $619.16. The payment of taxes and hire of equipment caused a net corporate loss of $2,702.16, but there was an accumulated surplus from previous operation of $7,601.35, which left a surplus June 30, 1910, of $4,899.19.

The only service performed by this tap line in handling the products of the mill of the controlling company is to switch the lumber from the mill to the trunk line, a distance of one-half mile. The divisions now received by it are altogether excessive. From no point of view may this allowance lawfully exceed a reasonable switching charge, which we think should not exceed a maximum of $2 a car.

BUTLER COUNTY RAILROAD.

The Butler County Railroad Company is owned by the Brooklyn Cooperage Company, while most of the timber land which it reaches is owned by the Great Western Land Company. All are subsidiary corporations of the American Sugar Refining Company, the cooperage company manufacturing chiefly sugar barrels. The railroad company was incorporated in September, 1905, and its capital stock issued and outstanding amounts to $163,500, issued for the tracks and equipment which it then acquired from the cooperage company. It is also indebted to the cooperage company in the sum of $50,000.

The tap line is in two disconnected sections. One connects with the Iron Mountain and the Frisco at a point in or near Poplar Bluff, Mo., known as Linstead, and extends to and into the plant of the cooperage company which is within three-fourths of a mile of the two trunk lines. The other section is the principal track of the tap line and connects with the Iron Mountain at Lowell Junction, about 7½ miles from Poplar Bluff, running thence southward about 7 miles to a point known as Baileys, with a branch about 3 miles in length connecting with the main stem at Rossville. At Baileys a connection is made with the unincorporated tracks of the cooperage company that run through its timber and are used largely in logging operations. Over a considerable portion of this unincorporated track the tap line has a trackage right. It also enjoys the privilege of running its trains over the Iron Mountain from Lowell Junction to Poplar Bluff, for which it pays 65 cents a train-mile for 25 cars. The equipment consists of 2 locomotives, 2 passenger coaches, 3 cabooses, and about 100 freight and log cars.

The timber is all hardwood and the logs are loaded on the cars by the employees of the cooperage company and hauled by its locomotives to a connection with the track of the tap line. The tap line then hauls the cars over its own rails to Lowell Junction, then over the Iron Mountain to Linstead and over its own track for a fraction of a mile to the mill, where they are unloaded by the cooperage company. A charge of 1 cent to 1½ cents per 100 pounds, amounting approximately to $1 per car, is made by the tap line against the cooperage company for the log movement to the mill, being the regular manufacturing rate under the Missouri distance tariff. The tap line switches the loaded cars from the mill to the tracks of the Frisco or Iron Mountain, a distance in each case of less than 1 mile. It receives from the trunk lines an allowance of from 2 to 5 cents per 100 pounds. The rates from points on the tap line, including the mill at Linstead, are in all cases 2 cents higher than the rates of the trunk lines from Poplar Bluff, excepting to New Orleans and New York.

where the most of the cooperage company's shipments actually move; to those points the Poplar Bluff rates apply from points on the tap line.

The traffic of the Butler County Railroad for the fiscal year ending June 30, 1910, was chiefly forest products, amounting in the aggregate to 184,688 tons, as against 2,475 tons of other freight. Of the first figure, 107,527 tons was logs and cooperage material, furnished by the controlling interests; 77,161 tons of logs, bolts, piles, ties, and lumber were moved for outsiders, but all of the timber came from lands of the Great Western Land Company. The 2,475 tons of miscellaneous freight included 1,195 tons of inbound machinery and coal for the proprietary companies. The passenger revenue for the same year was $4,104.22. The tap line operates three mixed trains in each direction daily between Linstead, where the plant is located, and Melville, a point on the unincorporated track south of Baileys. Two of these trains are said to be used principally for passenger business.

There are several independent industries on the tracks of the Butler County Railroad near Poplar Bluff or Linstead which secure their timber material from the Great Western Land Company, the tap line switching their product to the trunk lines. These industries lease their factory sites from the cooperage company; and the admission appears of record that the leases were made for the purpose of securing the traffic to the tap line so that it would obtain divisions thereon. There are also a few independent producers of ties, handle bolts, etc., that team their logs to the sawmills and ship out their products over the main track of the tap line into Lowell Junction. But such shippers pay either the local rate of the tap line in addition to the charge of the trunk line or pay a through rate that is 2 cents higher than the rate from Poplar Bluff.

This is a striking example of the advantages that an industry can get out of a tap line that it owns and holds out as a common carrier. The sugar company, as is well known, has important refining establishments at New Orleans and New York, and it is to its interest to have all the hardwood along the Butler County Railroad made available to it. The rates to New York and New Orleans are therefore so adjusted as to induce movements to those points and restrict movements to other points.

For its service in moving the products of the cooperage company's mill to the Iron Mountain and to the Frisco, a distance of less than 1 mile, this tap line may lawfully receive out of the rate nothing beyond a reasonable switching charge, which we fix at $1.50 per car.

DEERING SOUTHWESTERN RAILWAY.

The Deering Southwestern Railway Company is owned by the International Harvester Company and is operated in connection with the mill of its subsidiary corporation, the Wisconsin Lumber Company, at Deering, Mo. The officers of the Deering Southwestern are officers of other industrial or terminal lines owned by the Harvester Company. The tap line was incorporated in 1903, and has issued capital stock to the amount of $400,000. There have been one or two amendments to its charter, authorizing the building of extensions.

The Deering Southwestern, as in operation on the date of the hearing, connected with the Frisco at a point known as Deering Junction, and extended in a southwesterly direction for about 11 miles to Converse. It had 5 locomotives, 1 passenger car, 1 combination car, 1 caboose, 22 freight cars, and 66 logging cars. The lumber company itself owned a number of miles of unincorporated logging spurs connecting with the tap line, together with 1 small locomotive and a log loader.

Since the hearing extensions have been completed and put in operation, as the Commission is advised, so that its line now extends from Deering eastward a distance of nearly 14 miles, crossing the Frisco at Blazer and ending at Caruthersville, on the Mississippi River, where a junction is effected with another branch of the Frisco. The original line from Deering to Converse has been extended to Hornersville, a point on the Cotton Belt. The aggregate length of the tracks as thus extended is about 31 miles. Citizens of the town of Caruthersville donated the land for the terminals at that point.

The line as operated at the date of the hearing reached no towns and served no industries other than the proprietary company. The track as extended reaches several towns; and it is claimed that more or less outside tonnage is being developed.

The mill of the lumber company at Deering is about half a mile from the track of the Frisco; and the lumber company also has two small mills down in the timber. The logs are loaded by the lumber company and moved by it to the junction of the spurs with the main track of the tap line; from that point they are taken by the tap line to the mill, at a rate of $1 per 1,000 feet, which is equivalent to 1 cent per 100 pounds, charged up against the lumber company. At the time of the hearing the tap line switched the lumber to the Frisco at Deering Junction. But with the extension of the track the plan contemplated was the delivery by the tap line of the lumber the proprietary company at Blazer, 7 miles east of the mill. We given to understand that the operating conditions of the branch Frisco connecting with this tap line at Deering Junction are

such as to make it no longer practicable to receive the lumber at that point.

At the time of the hearing it was admitted that practically the entire tonnage of the tap line was supplied by the controlling interests, and no passengers were carried. It has subsequently opened a passenger service between Caruthersville and Hornersville; but no figures are given of record. The tap line files annual reports with the Commission and keeps its accounts in accordance with the method prescribed by the Commission.

The only rates published by the Frisco in which the tap line participates apply on lumber and forest products, and the allowance out of those rates to the tap line is uniformly 2 cents per 100 pounds. This is the same as the so-called local rate which it publishes from the mill to the junction point, a distance of one-half mile.

For its service in hauling the products of the mill of the controlling company to the Frisco at Blazer, a distance of 7 miles, we fix 1½ cents as the maximum division that may lawfully be paid to this tap line out of the rate; we fix the same maximum as the division that may lawfully be paid by the Cotton Belt on traffic delivered to it at Hornersville.

GIDEON & NORTH ISLAND RAILROAD.

The track operated by the Gideon & North Island Railroad Company connects at Malden, Mo., with the Frisco and Cotton Belt and extends in a southeasterly direction through Gideon, 8 miles distant, where it joins the Frisco, to a point known as North Island, a distance of about 21 miles. There are also about 10 miles of sidetracks and spurs and a short branch track which will be mentioned later. The tap line owns the spurs and sidings and 9 miles of its main track. But 7 miles, extending from Malden southward through Five Points, are leased from the Gideon-Anderson Lumber & Mercantile Company, and 5 miles, extending southward out of Gideon, are leased from the United States Cooperage & Handle Company. As a matter of fact, the three companies are substantially one in interest, the stockholders of the Gideon-Anderson Company owning a majority of the stock of the tap line; and stockholders of the cooperage company owning the minority. The president of the Gideon-Anderson Company is president of the tap line and owns about 52 per cent of the stock of the cooperage company. The tap line was incorporated in April, 1908, at which time the 12 miles of track which it leases from the controlling companies were laid and in operation, those tracks having been constructed subsequent to 1904 as plant facilities for the purpose of hauling logs to the mills. The additional mileage operated by the tap line was constructed by it after its incorporation.

The leases of track to the tap line will expire in 1918; and the consideration is stated as 4 per cent on the estimated value of the track, with the privilege to the tap line of purchasing the property at a stipulated valuation at the expiration of the term. One of the conditions is that the tap line shall build the necessary logging spurs, each not exceeding 2 miles in length, and shall load the logs on the cars and transport them to the mills. The tap line owns two log loaders. It has 3 locomotives, 12 flat cars, and about 30 logging cars. It leases 40 logging cars from the controlling companies. It formerly also leased several locomotives, which were later sold by the lumber companies.

The Gideon & North Island enjoys trackage rights over the Frisco for a distance of over 40 miles between Gideon and Wardell. Under these rights it hauls logs to the mill at Gideon, paying the Frisco 50 cents per 1,000 feet, for the use of the tracks.

The mill of the Gideon-Anderson Company is reached by the tracks of the Frisco at Gideon, while the mill of the United States Cooperage Company is within a few hundred feet of the Frisco rails in Malden. The tap line loads the logs and hauls them to the mills, making a charge of 1½ cents per 100 pounds against the lumber companies. It switches the lumber from the mill at Malden for a distance of about one-quarter of a mile to the interchange track from which they are taken by the Frisco. The Frisco itself occasionally takes the cars directly from the mill at Gideon; but they are usually switched by the tap line. It allows the tap line a division of 2 cents per 100 pounds out of the rates to Memphis, and 3 cents out of the rates to other territory, all of the rates as published from points on the tap line being 1 cent higher than the rate of the Frisco from the junction point. These rates and allowances relate only to hardwood lumber, staves, and heading. There are no joint rates or divisions on other commodities or on class traffic; and no allowances are received from the Cotton Belt, which apparently gets very little, if any, of the traffic.

There is a small independent sawmill about four miles from Gideon and another on the line between Gideon and Malden. Another small mill at a point known as O'Neill is reached by a spur track about 1 mile in length connecting with the tap line at Five Points. It formerly teamed its lumber to the tap line, but with the construction of the spur track its lumber is moved by the tap line at a charge of 1 cent per 100 pounds over the rate from Malden. The capacity of the independent mills is not stated of record. But apparently 95 per cent of the entire tonnage of the tap line is supplied by the controlling companies. The traffic for the year ending June 30, 1910, aggregated 103,017 tons, of which all but 1,239 tons were

forest products. The tap line carries neither passengers, mail, nor express matter. Two logging trains are run over the road daily.

It first filed an annual report with the Commission for the year ending June 30, 1910, and this report showed a net surplus of $8,125.51. The operating revenues in that year aggregated $52,283.31, and the operating expenses were $24,680.85. It expended out of its net earnings more than $17,000 for constructing new tracks, being apparently logging spurs, and paid for the lease of tracks $1,720.

This tap line comes clearly within the class of cases described in the original report, and is not entitled to any allowance from the trunk lines for the services which it performs for the controlling lumber companies or on their product.

MISSISSIPPI VALLEY RAILWAY.

The track of the Mississippi Valley Railway Company crosses and connects with the Frisco system at Steele, and extends from that point westward about 6 miles to Dolphin, and eastward over 9 miles to Tyler, on the Mississippi River. The hardwood mill of the Tyler Land & Timber Company, which owns practically the entire capital stock of the tap line, is at Tyler. The tracks and equipment, together with the mill and timber, were all purchased by the lumber company in 1901 from prior owners, and the tap line corporation was then formed. It has 2 locomotives, a combination car, and about 40 logging cars. It has no agents or clerks, its books being kept for it by employees of the lumber company.

The tap line hauls the logs from the point where they are loaded on the spurs in the woods to the mill, charging the lumber company $5 per car. Some logs are floated down the river to the mill. The tap line moves the lumber from the mill to the Frisco, a distance as heretofore stated of 9 miles, and receives an allowance of 2 cents per 100 pounds. It publishes no tariffs and has no rates on miscellaneous freight, but customarily charges 10 cents per 100 pounds on less than carload shipments, and on grain, cottonseed, and cotton charges from $5 to $10 per car, depending on the loading point.

The tap line is said to pass through a good farming country, the population of which is about 2,000, with a number of cotton gins and some country stores. The traffic for the fiscal year 1910 aggregated 87,915 tons, practically all of which was logs and lumber, and of which 40,134 tons was handled for the proprietary company. It also carries passengers on its logging and lumber trains, which run at irregular times, its revenue from passengers and the mail aggregating $3,571.20 for the year 1910.

Although the tap line has been receiving allowances for several years, at the date of the hearing it had not filed any annual report, but has since submitted its report for the year 1911.

With respect to the product of the mill of the proprietary company we should regard any allowance in excess of 1½ cents per 100 pounds as unlawful.

PARAGOULD & MEMPHIS RAILWAY.

The track of the Paragould & Memphis Railway Company connects with the Cotton Belt at Cardwell, Mo., and extends from that point through Paulding, Mo., where it connects with the Frisco, and thence to Manila, Ark., where it interchanges some traffic with the Jonesboro, Lake City & Eastern, with which, however, it has no physical connection. There is a short branch extending from Cardwell to a point known as Fort Scott, Ark. The length of the tap line aggregates about 27 miles. Its book valuation is $220,000, or more than $8,000 per mile. There are station buildings at Cardwell and Manila, and it uses the Frisco depot at Paulding. The tap line has 2 locomotives, 1 passenger car, 1 caboose, and 53 freight cars; 20 of the freight cars are owned, however, by the Cardwell Mill & Lumber Company. The tap line has 3 station agents, 2 train crews, and 14 trackmen.

The Paragould & Memphis Railway Company was incorporated in 1902, with an authorized capital stock of $525,000, of which $60,000 has been issued. A majority of the stock is owned by members of the Vail family, who own stock in five manufacturing companies served by the tap line, namely, the Decatur Egg Case Company, Cardwell Stave Company, Buffalo Stave Company, Paulding Stave Company, and Indiana Stave Company. The tap line has also executed a first mortgage in favor of a bank, securing a loan of $25,000, and a second mortgage for $90,000, on which the interest is unpaid, in favor of the Decatur Egg Case Company. The Egg Case Company is no longer in active business, but owns considerable land and timber on the tap line or in its vicinity. At the time of the incorporation nine miles of the track was already in operation, being owned by the Egg Case Company, and turned over by it to the tap-line corporation in exchange for stock.

It is claimed that the tap line hauls very few logs for the mills of the Vail interests, which obtain their principal supply by wagon from timber from off the tap line. A considerable quantity of logs is hauled by the tap line, however, for independent mills at a charge of $1.75 and $2 per 1,000 feet, log scale, which is equivalent to 1¾ and 2 cents per 100 pounds. These are net rates made on the understanding that the tap line shall haul the manufactured product.

The product of the mills at Cardwell is hauled a distance of about 1 mile to the Cotton Belt, or 4 miles to the Frisco. The product of the mills at Paulding is apparently switched a short distance to the Frisco or moves about 5 miles to the Cotton Belt at Cardwell. Such traffic as is interchanged with the Jonesboro, Lake City & Eastern is drayed from one track to the other at Manila, the expense being jointly borne by the two companies.

The claim is that only 25 per cent of the traffic of the tap line is supplied by the controlling companies. It hauled during the fiscal year 1910, 75,470 tons of forest products, and also 596 tons of agricultural products moving outbound, in addition to which 404 tons of coal and 1,819 tons of supplies and miscellaneous material came in. During the same period the passenger earnings aggregated $1,553.98. There was a net surplus on June 30, 1910, of $19,727.94, which had been expended, however, in betterments. No dividends have been paid.

In this case we think the allowance on the products of the mills of the Vail companies should not exceed a reasonable switching charge, which we fixed at $3 per car on the product of the mills at Paulding and Cardwell when delivered to the trunk lines at Cardwell and Paulding, respectively, and $2 per car when delivered to the nearest trunk line.

POPLAR BLUFF & DAN RIVER RAILWAY.

The Poplar Bluff & Dan River Railway Company was organized in February, 1906, with a capital stock of $50,000, practically all of which is owned by Mr. H. I. Ruth, its president, who is also president and treasurer of the Hargrove-Ruth Lumber Company. The two companies are identical in interest; and the mill, timber, and railroad were acquired by the present owners at a receiver's sale. Moreover, the tap line previous to its incorporation was privately operated by the lumber company as a facility of the mill.

The track connects with the Iron Mountain at Poplar Bluff, Mo., and extends for a distance of 22 miles southward to Ruthville. The tap line has 2 locomotives, and 6 cars, not equipped with safety appliances. Practically the entire tonnage is supplied by the proprietary company, the only exception being a few stave bolts and ties shipped by small producers. The tap line owns the logging spurs and performs all service necessary in delivering the logs to the mill, setting up a charge of $1 per 1,000 feet against the lumber company. The lumber is loaded at the mill into cars standing on the tracks of the Iron Mountain. The tap line receives, however, a division of 4 cents per 100 pounds out of the joint rates, which includes an arbitrary of 2 cents per 100 pounds added to the rates in effect from the junction point.

On June 30, 1910, the tap line had a surplus of $19,000, the revenues for the year ending on that date having exceeded the expenses by nearly $10,000. It does not file annual reports with the Commission.

It is frankly stated by counsel on the record that the methods and practices of the Poplar Bluff & Dan River have been irregular: and his client voluntarily announced a willingness to relinquish all claim to receiving divisions as a common carrier. In fact, the witness, until required by the Commission to do so, refused to testify on the ground of self-incrimination. We hold that no allowance out of the rate may lawfully be made in this case.

SALEM, WINONA & SOUTHERN RAILROAD.

The Missouri Lumber & Mining Company owns about 19 miles of track connecting with the Frisco at a point known as Winona Junction, Mo., and extending in a northerly direction to a point known as Horse Hollow. It also owns 2 locomotives, 2 coaches, a caboose, 2 box cars, and 50 flat cars. About 13 miles of the track, from Winona Junction to a point known as West Eminence, and all of the equipment are leased by the lumber company to a separate corporation which it caused to be incorporated in 1908, and which is owned by its stockholders, known as the Salem, Winona & Southern Railroad Company. The annual rental is $12,000, or about 8 per cent on the estimated value of the property. The lease in terms apparently does not cover the 6 miles of track between West Eminence and Horse Hollow, but the tap line also operates that portion of the track. The entire line was originally constructed by the lumber company as a facility for its mill, then located at Grandin, Mo., on what is now the Current River branch of the Frisco, over which the lumber company had trackage rights for its logging trains. The plant at Grandin was subsequently abandoned and the lumber company built a new mill at West Eminence. The tap line enjoys trackage rights over the Frisco for a distance of about two and a half miles between Winona Junction and Winona. There is a small station building and track scales at West Eminence.

The lumber company loads the logs on the cars and with engines which it owns and operates hauls them over the track from Horse Hollow to the mill at West Eminence. The tap line moves no logs to the mill. It hauls the lumber from the mill to Winona, a distance of over 15 miles, where it delivers them to the Frisco, which allows a division of from 1 to [illegible] cents per 100 pounds. On shipments that move to points where no joint rates and divisions are published the tap line makes a charge of 4 cents per 100 pounds in addition to the rate of the Frisco from Winona.

The tap line moved 53,101 tons of forest products of the proprietary company during the fiscal year 1910 and 3,006 tons for others. It is stated that there is one small independent mill on the line and another about three miles from Horse Hollow, which teams its lumber to that point for shipment. The miscellaneous freight included 5,310 tons supplied by the controlling company and 3,145 tons which is said to have been furnished by outsiders. It will be seen therefore that the proprietary company furnishes nearly 90 per cent of the traffic. During the same year the passenger earnings aggregated $5,302.49 and the receipts from the carrying of the mails were $822.86. The tap line claims to run two "mixed trains" daily, in each direction on a regular schedule, their principal load being lumber.

It is admitted on the record that the tap line was incorporated for the purpose of securing divisions out of the rates and trackage rights from the Frisco. It has capital stock amounting to $150,000; but the tap line owns neither track, right of way, nor equipment, and the record does not state what proceeds, if any, were realized from the issuance of the stock.

In this case we find that any division to the tap line out of the rate on the products of the mill of the proprietary lumber company in excess of 1½ cents per 100 pounds would be unlawful.

FERNWOOD & GULF RAILROAD.

The Fernwood & Gulf Railroad Company was incorporated in 1906 and has capital stock issued and outstanding to the amount of $10,000, together with bonds aggregating $125,000. It is identical in interest with the Fernwood Lumber Company, the stockholders being common and holding shares in the same proportion.

Some years ago the lumber company built a private logging road, laid with wooden rails, over which cars were drawn by horse or mule power. Later one or more small locomotives were acquired and the wooden rails were replaced by 25 and 30 pound steel. When the timber in that vicinity was cut out the track was moved to a different location in order to reach other timber and heavier rails were substituted. About 21 miles were laid and in operation when the tap line was incorporated; and an agreement was drawn up under which this track was thereafter operated for a period of three years by the tap line. At the end of that period the lumber company sold this track for the sum of $125,000 to the tap line, reserving, however, the privilege of operating logging trains thereon without charge. In 1909 about 9 miles of additional track were laid at a cost of $135,000.

The tap line, as described on the record, consists of about 33 miles of track connecting with the Illinois Central at Fernwood, Miss.,

running southeastward to Tylertown, on the New Orleans Great Northern, and thence northeastward to a point one mile beyond Kokomo. There are also about six miles of switch tracks in the vicinity of the mill at Fernwood, which are owned and operated jointly by the Illinois Central, the tap line, and the lumber company. The lumber company has several miles of logging tracks connecting with the tap line and extending into the timber. The equipment of the tap line consists of a baggage car, 2 combination passenger cars, and 19 freight cars. It owns no locomotives, but leases one from the lumber company. There are several stations on the line and it has one train crew, a number of section men, and other employees.

The tap line was built through virgin timber owned largely by the proprietary company. Its traffic is chiefly lumber and other forest products, of which 60,374 tons moved during the year ending June 30, 1910, the total freight movement in that year being 79,011 tons. The traffic included 1,477 tons of naval stores, 579 tons of coal, [illegible] tons of agricultural products, and 10,950 tons of miscellaneous supplies and merchandise. It is asserted that only 63 per cent of the tonnage was supplied by the proprietary company. The revenues from freight traffic during the same year were $53,507.82; and the earnings from passenger, mail, and express aggregated $12,7[illegible].

The mill of the Fernwood Lumber Company is several hundred feet from the right of way of the Illinois Central at Fernwood. The logs are hauled to the mill by the lumber company, under the free trackage right heretofore referred to. The empty and loaded cars for lumber shipments are switched from the mill to the Illinois Central, sometimes by the lumber company, sometimes by the tap line, and at other times by the Illinois Central itself. In all cases, even when the Illinois Central itself switches the car, an allowance of 2 cents per 100 pounds is paid to the tap line by the Illinois Central out of the rates in effect from Fernwood. On the shipments made by small independent sawmills served by the tap line the rates charged are 2 cents per 100 pounds higher than the rate from the junction point, and the tap line receives from the Illinois Central [illegible] cents per 100 pounds. A part of the output of the Fernwood mill is moved by the tap line to Tylertown, and there delivered to the New Orleans Great Northern, which makes an allowance of 2 cents per 100 pounds. That trunk line pays a division of 3 cents on lumber shipped by other mills on the tap line.

In this case we hold that the Illinois Central may lawfully pay the tap line a switching charge of $2.50 a car when it handles the products of this mill to its rails; the New Orleans Great Northern may lawfully allow it a division out of the rate of 2 cents per 100 pounds.

KENTWOOD & EASTERN RAILWAY.

The Kentwood & Eastern Railway Company is owned by the stockholders of the Brooks-Scanlon Lumber Company. The two companies have the same officers, whose salaries, aggregating $20,000 per year, are prorated between the companies in the proportion of their capital stock. The tap line was incorporated in 1905; its capital stock amounts to $100,000; and it is indebted to the lumber company in the sum of $220,000, on which it pays interest.

The lumber company has two mills, both at Kentwood, La., one directly adjacent to the right of way of the Illinois Central Railroad and the other only 400 feet distant therefrom. Both are reached by sidetracks connecting with the Illinois Central.

The tap line has a track about 3 miles in length, extending from Kentwood eastward to a point known as Bolivar Junction, about 2 miles of which it does not own but leases from the lumber company. This track has a third rail, enabling the tap line to operate standard and narrow gauge trains over it. From Bolivar Junction a narrow-gauge track laid with 35 and 40 pound steel and running uphill and down dale extends eastward for over 25 miles, crossing the New Orleans Great Northern Railroad at Warnerton and terminating at a point known as Hackley. The construction of this track was apparently begun as long ago as 1896 by another lumber company; and it was completed about 1904. Subsequently the Brooks-Scanlon Company purchased the track for the sum of $112,000, as well as the timber and the mill of the former owner, the price paid for the mill being $50,000. It has retained the ownership of the track from Bolivar Junction to Hackley, and leases it to the tap line for a rental of $10,000 per annum, plus the taxes. From Bolivar Junction the tap line has another track, referred to as the standard-gauge division, extending southward for a distance of about 23 miles to Foley. This is laid with 56-pound steel and traverses a level country. It was constructed in 1906. The tracks operated by the tap line aggregate over 50 miles in length; but it owns only one-half of the mileage of the main track. It has 4 standard-gauge and 5 narrow-gauge locomotives, 6 passenger cars, 4 cabooses, 48 box cars, 9 work cars, 52 log cars and 182 flat cars; of this number 252 are narrow gauge and 51 standard gauge. The lumber company also has a number of miles of logging tracks connecting with the incorporated line and extending into its timber. It also owns one locomotive and a number of cars. An independent manufacturer, the Bassfield Lumber Company, has a short unincorporated logging road connecting with the tap line about 2 miles west of the junction with the New Orleans Great Northern. There are said to be several small towns or settlements along the tap line, and it has

stations at three points, with "pagodas" or sheds to shelter passengers at one or two other points. It is claimed that there are 32 small sawmills along the line, only one of which has any relation to the Brooks-Scanlon Company, and that their average output is from 15,000 to 40,000 feet of lumber daily. There are 6 turpentine stills, 4 of which are owned by the proprietary company, as is admitted, and also 17 cotton gins, together with a number of farms in the vicinity of the tap line. The tap line has a daily train for logs and passengers on the standard-gauge division, and two in each direction daily on the narrow-gauge division; with two such trains between Kentwood and Bolivar Junction. The passenger revenue for the year 1910 aggregated $13,681.60, and the earnings from mail and express aggregated $2,521.37. Its revenue from freight traffic for the same year amounted to $193,624.41. It handled 281,030 tons of lumber and other forest products, of which about 83 per cent was supplied by the proprietary company. It also moved 7,378 tons of coal inbound, and moved outbound 3,134 tons of agricultural products and 3,043 tons of naval stores. The merchandise and miscellaneous supplies aggregated 6,981 tons. Of all this miscellaneous freight other than forest products a substantial portion was handled for the controlling interests or their employees.

The logs are loaded on the cars by a firm of logging contractors, which constructs and maintains the spurs and delivers the cars at the junction with the incorporated line. The tap line sets up against the lumber company a charge of 2½ cents for a haul of 15 miles, and 3 cents for hauls in excess thereof, for the movement of the logs to the mill. The Illinois Central allows a division of from 2½ to 4 cents per 100 pounds out of the rates, which are higher from points on the tap line than from the junction point. The net earnings of the Illinois Central, however, are less than its published rates from Kentwood. The record is not altogether clear respecting the amount of the divisions. But apparently when the lumber moves out over the Illinois Central and the allowances are paid, the tap line refunds to the lumber company the revenue which it has received as a division from the Illinois Central. The practical result seems to be that the lumber company has its logs hauled to the mill free of charge or at very low cost. As heretofore stated, the lumber is taken from the mill by the Illinois Central. None of the lumber from the proprietary mills moves out over the New Orleans Great Northern.

On shipments of lumber moving from the independent mills heretofore referred to, the tap line does not haul the logs but receives from the Illinois Central the same divisions as are paid on the lumber shipped by the Brooks-Scanlon Company. The tap line makes annual reports to the Commission, which show a net surplus on June

30, 1910, of $127,936.04. No dividends have been paid. Seventy-five per cent of the revenue accrues on the traffic of the lumber company.

One of the mills of the proprietary company is directly on the line of the Illinois Central and the other but 400 feet from it. The service on the products of the mill is performed by the trunk line and not by the tap line. Allowances out of the rate by the Illinois Central to the tap line under such circumstances we would regard as an unlawful concession out of the rate to the proprietary company.

KENTWOOD, GREENSBURG & SOUTHWESTERN RAILROAD.

The Kentwood, Greensburg & Southwestern Railroad Company is controlled by the shareholders of the Amos Kent Lumber & Brick Company, who own practically the entire capital stock. That company in turn is subsidiary to the F. C. Denkmann Company, which also controls the Natalbany Lumber Company and its tap line, the New Orleans, Natalbany & Natchez, hereinafter described.

The Kentwood, Greensburg & Southwestern connects with the Illinois Central at Kents Mill, near Kentwood, La., and extends in a westerly direction for about 16 miles to Freiler. The track is narrow gauge, laid with 35 and 40 pound steel. Beyond the terminus the lumber company has an unincorporated track; it also has logging spurs connecting with the tap line at various points and extending into the timber. The tap line has 7 locomotives, 3 of which are leased to and used by the lumber company, and 2 so-called passenger cars, which are, in fact, rebuilt cabooses. There are also about 70 freight or logging cars.

The construction of the tap line was begun as long ago as 1850, and it was completed to Freiler in 1904. Apparently it was operated as a private facility of the mill. In any event it was not incorporated until 1906, after it had been purchased by the Denkmann interests at a cost of $100,000 from the prior owners, who also conveyed the mill and timber. Its authorized capital stock was fixed at $350,000, of which $100,000 was issued. The tap line owes the lumber company nearly $50,000.

The Amos Kent Company has a sawmill on the tracks of the Illinois Central at the junction point, where it also has a brick plant and commissaries and stores. There are said to be four other small sawmills along the tap line, which obtain their logs by means of drays, one of which is served by a spur track about 600 feet in length connecting with the tap line. One or two small towns, each having a population of less than 300, are reached by the tap line, which has a station and an agent at Freiler, and one also at the junction point.

The logs are hauled to the mill of the proprietary company by the tap line from the loading point, and are dumped into the pond by the train men. A charge of 3 cents per 100 pounds is passed to the

credit of the tap line by the lumber company on its books, but apparently is not actually paid. The Illinois Central places the empty car at the mill and takes the shipments of lumber therefrom. The rates on lumber which it publishes in connection with the tap line are uniformly 2 cents per 100 pounds higher than the rate from the junction point; and the gross allowance is 4 cents per 100 pounds. Shipments of lumber by the independent sawmills are loaded on narrow-gauge cars and hauled by the tap line to the junction point, where it transfers the lumber into standard-gauge cars furnished by the Illinois Central; the latter company issues a bill of lading reading from the junction point. On such shipments the tap line apparently assesses a local charge of 3 cents per 100 pounds in addition to the rate of the Illinois Central from the junction point; and the shipper is also required to pay 50 cents per 1,000 feet for the transfer of the lumber from car to car.

The aggregate traffic for the year ending June 30, 1910, was 64,08 tons, of which all but 3,762 tons was supplied by the proprietary company. There were 765 tons of agricultural products moving outbound, and 1,597 tons of merchandise and miscellaneous freight. The remainder of the tonnage was forest products. The revenue from all this traffic was $51,785.34. The tap line received $801.5 for carrying the mail, and received on passenger traffic $2,823.83. It had a net surplus on June 30, 1910, of $12,508.11. No salaries are paid to its officers, who are officers also of the lumber company.

Here again the mill of the proprietary company is not only immediately on the rails of the trunk line but the service on the product of the mill is performed by the trunk line. Under such circumstances we regard any allowance to the tap line on the products of the mill of the controlling company as an unlawful rebate to the lumber company.

NEW ORLEANS, NATALBANY & NATCHEZ RAILWAY.

The stockholders of the Natalbany Lumber Company hold practically the entire capital stock, amounting to $155,000, of the New Orleans, Natalbany & Natchez Railway Company, which was incorporated in 1902 and owes the lumber company $181,482.89. As heretofore stated, the Natalbany Lumber Company is controlled by the Denkmann interests, who also own the Kentwood, Greensburg & Southwestern Railroad, *supra*. The tap line, the mill, and the timber were purchased by the Denkmann interests in one transaction, the value of the properties, however, being separately estimated.

The track of the tap line extends from a connection with the Illinois Central at Natalbany, La., in a northwesterly direction for 2

miles to a point known as Pine Grove. There are about 7 miles of spur tracks and sidings, with nearly 8 miles of unincorporated logging tracks which connect with the tap line at various points. There are said to be station buildings at Natalbany, Montpelier, and Pine Grove, with public team tracks; and the tap line has track scales. It has 10 locomotives, 2 passenger cars, a caboose, 6 box cars, and 130 flat cars, 2 motor cars, and a pile driver. Six of the locomotives are leased to the lumber company at a charge of $12 per day for each. The tap line employs 3 agents, 4 train crews, and 5 gangs of trackmen, none of whom are employed by the lumber company.

The Natalbany Lumber Company has three sawmills, two of which, together with the planer, are about a mile from Natalbany at a point designated as Mason. The other sawmill is within 100 feet of the right of way of the Illinois Central in Natalbany, but the loading track is owned by the tap line.

The logs are loaded by employees of the lumber company and are assembled into trains and hauled over the unincorporated spurs to the main track by the lumber company, which uses for that purpose the locomotives leased from the tap line. The latter hauls the logs to the mill and the train men unload them into the pond. At the end of each month a bill is rendered to the lumber company for the movement of the logs, at a rate of 3 cents per 100 pounds. The lumber manufactured at the three mills is switched by the tap line a distance of from 1,500 feet to about 1 mile to the interchange track, from which they are taken by the Illinois Central. The agent of the trunk line issues the bills of lading. The rates on lumber in effect over the Illinois Central from Natalbany are applied on shipments from the mills of the proprietary company; and the Illinois Central allows a division of 2 cents per 100 pounds. But the independent mills served by the tap line, of which there are said to be seven, pay on their lumber shipments rates that are 2 cents per 100 pounds higher than the rates from Natalbany.

It is stated that the tap line runs two "mixed trains" in each direction daily on a regular schedule, on which passengers and the mail are carried, and that in addition there are usually four logging trains, on irregular schedule. The passenger and mail earnings for the fiscal year 1910, as reported to the Commission, aggregate $4,246.22. The freight revenue for the same year amounted to $159,051.71. At the end of that year the surplus, as accumulated from the operations of three years, amounted to $73,914. It is estimated that about 80 per cent of the entire freight traffic is supplied by the proprietary company. The volume of forest products for the year 1910 was 236,657 tons and the miscellaneous freight weighed 8,182 tons.

We hold on the facts disclosed in the record of this case that any allowance out of the rate to the tap line in excess of a reasonable

there were 127,214 tons out of a total freight movement of 137,789 tons. The proprietary company contributed 89,514 tons of the forest products, and 37,700 tons of such commodities are said to have been shipped by others. It will be observed therefore that there is a substantial tonnage in which the proprietary company is not directly interested.

The mill is near the tracks of the Illinois Central in McComb, and that company customarily places the empty cars at the loading platform and moves the shipments therefrom. The tap line occasionally switches a car from the mill, a distance of about 600 feet. The logs are loaded by the lumber company, and the cars are moved by it to the junction of the logging spurs with the main line; from that point they are taken by the tap line to the mill, for which a charge of $5 per car is made against the lumber company. The through rates on lumber from points on the tap line are 2 cents per 100 pounds higher than the Illinois Central rate from McComb. The tap line is allowed 4 cents per 100 pounds, or 2 cents in addition to the arbitrary. From the mill of the proprietary company the rate applied does not include the arbitrary of 2 cents, and the tap line receives on such traffic a division of 2 cents per 100 pounds.

We hold on the facts appearing here that any allowance out of the rate on the products of the mill of the proprietary company is unlawful.

NATCHEZ, COLUMBIA & MOBILE RAILROAD.

The capital stock of the Natchez, Columbia & Mobile Railroad Company, of which $900,000 has been issued, is held by the same persons and in the same proportions as the stock of the Butterfield Lumber Company, which has a mill at Norfield, Miss. The track of the tap line joins the Illinois Central at Norfield and extends eastward for 14 miles to a point known as Main Line Junction, where it divides into two branches, one extending northeastward for about 9 miles to Old Camp, and the other track running southward about 7½ miles to Furlough switch. In addition to these tracks, aggregating about 30 miles in length, the tap line builds and operates for the lumber company logging tracks of a temporary character joining the main line at various points and extending into the timber that is being cut. There are three towns or settlements where the tap line has station buildings, and at the junction point, Norfield, it employs jointly the agent of the Illinois Central. There are track scales at Norfield on which the employees of the tap line weigh the shipments of the lumber company. The equipment consists of 7 locomotives, 1 baggage car, 2 passenger cars, 2 box cars, 10 flat cars, and 75 logging cars, with a few work cars and a pile driver.

The tap line was incorporated in 1892, and the first construction of the track was coincident with the building of the mill of the lumber company. It is stated that the latter had previously endeavored to get the Illinois Central to build a track for the purpose of bringing logs from the timber to the mill, and being unsuccessful in this effort it undertook the construction of the tap line.

The logs are loaded on the cars by employees of the lumber company, but the locomotives of the tap line not only move the cars to the mill but perform all necessary service on the logging spurs in the woods, including the movement of the log loader from place to place. The train employees unload the logs into the pond at the mill. For these services a charge of 2 cents per 100 pounds is set up against the lumber company, together with a special switching charge of $1 per car for the services on the logging spurs. The tap line switches the empty and loaded cars for the lumber shipments between the mill and the interchange track with the Illinois Central, a distance of one-quarter of a mile, the mill being adjacent however to the Illinois Central right of way. The rates published by the Illinois Central in which the tap line participates are 2 cents per 100 pounds higher than the junction-point rates. In the case of shipments by the proprietary lumber company this arbitrary represents the charge of 2 cents already referred to for moving the logs to the mill. The Illinois Central gives a division of 4 cents per 100 pounds or a net payment out of its earnings of 2 cents. It is interesting to observe the way in which the payments are made: The charges on the lumber are assessed by the Illinois Central at the regular rate from the junction point; and at the end of each month, upon presentation by the tap line of a statement of the inbound movements of logs to the mill, the claim department of the Illinois Central refunds 2 cents per 100 pounds. There are several small independent mills along the tap line, including one, known as the Busbee mill, which has a sidetrack connecting with the tap line. These mills pay on their lumber 2 cents per 100 pounds more than the rates in effect from the junction point; and those mills have to bear the entire cost of moving their logs in.

The tap line runs two logging trains daily, to one of which a passenger coach is attached. It also runs one other train, referred to on the record as a "mixed train," on which passengers and mail are carried. Its revenues during the year 1910 from the carriage of passengers and mails aggregated $3,735. During the same year it earned on freight traffic $101,213.05. There was an accumulated deficit on June 30, 1910, of $556,890.70. This has been taken care of in some way by the lumber company. The record clearly indicates that the entire revenues are paid over to the lumber company and placed to the credit of the tap line on its books. The lumber company makes

all disbursements, purchases the material and supplies, and pays the employees of the tap line. It owns the shops where the locomotives and cars of the tap line are kept in repair.

The record does not indicate the exact proportion of the freight traffic in which the proprietary company was interested, but during the year 1910 there were 16,611 tons of lumber and about 168,000 tons of logs. During the same year 1,692 tons of agricultural products and merchandise moved outbound, and 3,063 tons of merchandise and supplies, together with 3,773 tons of coal, moved in. A large proportion of this traffic was apparently handled for the account of the lumber company or its employees. There are several stores and commissaries along the line, some of which are owned by outside interests, and operated by the lumber company under some special arrangement.

We find no justification here for any allowance on the products of the mill of the proprietary lumber company.

ALABAMA CENTRAL RAILROAD.

The Alabama Central Railroad Company was incorporated in 1906 with an authorized capital stock of $100,000, of which $90,000 has been issued and is owned by E. M. Barton, its president, who, with his family, owns a majority of the stock of the Manchester Lumber Company. The tap line has no bonds; its track connects with the Illinois Central, the Frisco, and the Northern Alabama Railway at Jasper, Ala., and extends northward for a distance of less than seven miles to Manchester. Beyond that point the lumber company has an unincorporated logging road. The equipment of the tap line consists of one locomotive and one combination passenger car. The lumber company owns and operates locomotives and logging cars. Its mill is at Manchester, a sawmill town with a population of about 500, where there is a company store. There is said to be coal underlying a considerable portion of the timber land of the lumber company, which exceeds 26,000 acres; but no mines have been opened.

When the mill was opened the public carriers proposed to build or assist in the building of the necessary track to reach their lines; but their offers were not taken advantage of, the tap line corporation being formed to build and operate the track. One train runs daily in each direction over the tap line, on which a few passengers are carried, the revenue therefrom being $280.50 for the year 1910; for the carriage of the mail the tap line received $294.97, while its revenues from express traffic amounted to $4.96. Over 85 per cent of its freight revenues, amounting to $13,014.25, for the same year, accrued on traffic of the proprietary company, and about 40 per cent of that amount was paid by the Illinois Central and Frisco, which

be several small towns or settlements along the tap line with populations ranging from 100 to 600, each having one or more stores. It is also claimed that five independent sawmills and eight or nine cotton gins use the facilities of the tap line; and there are many farms along the line. The tonnage statements filed of record relate to a period of 11 months ending December 1, 1910, during which 76,592 tons of freight were handled. The proprietary lumber company shipped 60,000 tons of lumber and forest products, while 13,000 tons of such freight were shipped by others, together with 2,000 tons of crossties, which were apparently cut on the lands of the lumber company. About 800 tons of cotton and cottonseed and about the same quantity of merchandise were handled. The statement is that 80 per cent of the forests products and 20 per cent of the miscellaneous freight were supplied by the proprietary company. The tap line does not carry passengers, mail, or express, but operates one regular logging or freight train daily in each direction, and three other such trains at irregular times.

The logs are hauled by the tap line from the points where they are loaded on the logging spurs to the mill, a charge of 3 cents being set up against the lumber company for this service. Most of the lumber is apparently shipped out in the rough and is switched by the tap line a distance of about a quarter of a mile from the mill to the interchange track. The shipments of dressed lumber are moved by the trunk line from the loading track at the planing mill. On all lumber shipments of the proprietary company the tap line receives from the Mobile & Ohio a division of 3 cents per 100 pounds, out of the junction-point rates. The same rates and the same allowances apply in connection with the lumber shipped by independent producers.

The tap line filed its first annual report with the Commission for the fiscal year ending June 30, 1911.

In this case we think that any allowance to the tap line on the dressed lumber is unlawful, but a reasonable switching charge of $1.50 a car may lawfully be paid to the tap line for switching the rough lumber from the sawmill to the trunk line.

IRREGULAR PRACTICES OF TAP LINES.

It appears from the foregoing statements respecting the several tap lines described in this supplemental report, as well as from the statement of those described in the original report, that there are many respects in which the law and the rules and regulations of the Commission are not observed by them. Although claiming to be common carriers, some of them did not file annual reports with the Commission until recently. The reports of others are so far from being complete that they can not be said to comply with the require-

ments of the act. Many of them also do not publish any local rates to apply on traffic received from or delivered to their trunk-line connections. Many of them carry passengers and less-than-carload shipments without charge at all; others make a charge without the authority of published tariffs. We have already referred to the use made by controlling lumber companies of their tap lines under formal and informal agreements for trackage rights with and without charge, and all without any tariff authority. The Hours of Service law, the Safety Appliance act, and other acts imposing certain requirements on common carriers engaged in interstate commerce are not fully complied with in many cases and in others are wholly disregarded. There is a lack of attention also to our rules and regulations respecting the filing of tariffs and the keeping of accounts. In some cases our examiners have been refused full access to the books of tap lines. With respect to all these matters the law makes no exception in favor of any railroads that purport to be common carriers. While our conclusions in no instance have been based on the failure of a tap line to comply with our rules and regulations, we must give warning to all such companies that purport to hold themselves out as common carriers that such irregularities must promptly be corrected.

GENERAL COMMENTS.

The rates of the trunk lines for the movement of logs in this territory are penalty rates; that is to say, the inbound rate to the mill is higher than it should be and is reduced to a net rate, provided the lumber goes out over the rails of the same carrier. Such rate adjustments are adverted to and criticized in *Red River Cotton Oil Co. v. T. & P. Ry. Co.*, 23 I. C. C. 438. So far as we can see from a careful examination of the record there is no real necessity for any such rate adjustment in this territory. The penalty rates should be withdrawn, and in their place the carriers ought to fix reasonable flat rates for the inbound log movement.

Orders will be entered as soon as possible to give effect to the views expressed in the original and supplemental reports herein. Tariffs fixing rates and switching charges in accordance with our conclusions may be filed on three days' notice. The carriers will also be expected to submit for the approval of the Commission the basis of allowances to lumber companies, under section 15, in the cases where in the original and supplemental reports we have said that such allowances might properly be paid. When approved by the Commission such allowances must be published.

In the majority of cases the tap lines have made no joint class d commodity rates with their trunk-line connections. In other

cases joint rates have been established, at least to some destinations. Where joint through class and commodity rates are in effect or are hereafter made effective to or from points on tap lines the trunk lines and the tap lines will be expected to submit to the Commission for approval the basis of their divisions. It is expected also that they will submit for our approval reasonable and nondiscriminatory rates on forest products when shipped from tap-line points other than the mills of the controlling companies, and will also submit the bases of the divisions thereof.

When all these matters shall have been adjusted in compliance with the views of the Commission an order will be entered authorizing the trunk lines to make settlements on these bases with respect to all traffic moving after May 1, either under section 15 or as allowances out of the rate, as provided herein in the respective cases.

Orders in other cases in which these or other tap lines in this territory are parties defendant may be called to our attention in case they are in conflict herewith.

REPORT OF THE COMMISSION.

PROUTY, *Chairman:*

In No. 4262, involving rates applied to the transportation of live stock, packing-house products, and fresh meats between points in the southwest, 22 I. C. C., 160, referred to herein as the *Oklahoma case,* the Commission approved a mileage scale for the movement of fresh meats and packing-house products in carloads from Wichita, Oklahoma City, and Fort Worth to various points of consumption, among others, to Arkansas and that part of Louisiana west of the Mississippi River. No order was made in that proceeding, but the Commission recommended that the rates found reasonable be forthwith established by proper tariff. The carriers thereupon proceeded to file such schedules, but before these tariffs took effect packing-house interests located at the city of Wichita protested against the rates about to be established, for the reason that they involved substantial advances from Wichita while no corresponding advances were made from Kansas City and St. Louis.

Upon an examination of these schedules it appeared that their effect was to advance in many cases rates from Wichita to points in Arkansas and Louisiana. It was alleged by the packing houses at Wichita that in these markets of consumption they came into competition with packers at Kansas City and St. Louis. It further appeared that in the past a certain relation in rates had been maintained between these different points of production and that by the filing of these new schedules, which advanced rates from Wichita while those from Kansas City and St. Louis remained as before, Wichita was placed at a substantial disadvantage. The rates filed by the carriers were those recommended by the Commission, but in disposing of the *Oklahoma case, supra,* the effect of competition from Kansas City and St. Louis had not been referred to nor considered and since it was apparent that this competitive relation should be taken into account the Commission suspended the proposed tariffs pending further investigation into that aspect of the matter.

At the hearing the packing interests located at these various points of production, as well as the principal carriers interested in this traffic between all points in controversy, were present and were fully heard.

The packers of Wichita insisted that the rates found reasonable by the Commission, when applied to Arkansas and Louisiana, worked a substantial advance over previous rates, and that lower rates should be prescribed. An examination of the tariffs themselves discloses that in many instances the rates of the Commission are higher than those now in effect, while in many other instances they are lower. Ten representative points have been selected in Arkansas and 10 other points in Louisiana. Below are given two tables showing the

required to sustain these reductions there, they ought to be allowed to recoup themselves so far as is possible in this territory. It is urged that these carriers are not in all cases identical with those operating from the same markets into more westerly territory, but that does not alter the situation. While we must be largely influenced in many instances in passing upon the reasonableness of a given rate by the adjustment which has grown up in the particular locality under consideration, we are convinced that here substantial justice will be done and that discrimination can only be removed by applying from Kansas City and St. Louis into Louisiana and Arkansas the same mileage scale which has been found reasonable from Wichita, Oklahoma City, and Fort Worth.

At the present time rates into this territory from points like Chicago, St. Paul, Sioux City, etc., are constructed by adding certain arbitraries to rates from St. Louis and Kansas City. In our opinion the same arbitraries should be added to the new mileage rates when constructed upon the Commission's scale.

It may be that the resulting rates will be justly open to attack upon the ground of discrimination in favor of these more distant points as compared with Wichita or the more southerly packing centers, but this condition is not presented or developed by this record. If it is conceived that the resulting rate is unduly discriminatory against any particular locality or description of traffic, complaint may be filed specifically presenting that matter, and nothing herein contained is to be taken as an adjudication upon a question so presented.

This Commission has no authority to compel the advance of a rate for the purpose of removing discrimination. It can not therefore readjust these rates upon the basis suggested without the cooperation of the carriers. All the principal lines were, however, represented upon the hearing, and were unanimous in the opinion that some scheme of this kind should be adopted and in the statement that whatever plan was approved by the Commission would be put into execution by them.

It is therefore recommended that the mileage rates established by the Commission in the *Oklahoma case*, or any subsequent modification of those rates, upon fresh meats and packing-house products, be applied to points in Louisiana and Arkansas from St. Louis, Kansas City, Wichita, Oklahoma City, and Fort Worth, by proper tariffs, effective not later than July 1, 1912. Upon the filing of such tariffs the order of suspension will be vacated.

3. Former rate of 38 cents to Oklahoma City from El Paso should be continued as a proportional rate on movements of live stock coming into El Paso by rail, and the mileage scale should be confined exclusively to the local movement from El Paso.
4. It appears that in the great majority of the instances herein carriers should establish through routes and joint rates via all reasonably available direct lines. If they fail to do so, upon complaints being filed, investigations will be made.
5. Rates on stock cattle ought not to exceed 75 per cent of the rates prescribed by the Commission for the movement of beef cattle.
6. Live-stock rates into Oklahoma City and from that point to Kansas City are, in most instances, higher than the live-stock rate to Kansas City, and that ought to be so, since it seldom happens that the direct line from the point of origin to Kansas City is through the Oklahoma market.
7. While it would certainly be desirable if the same scale of live-stock rates applied both to Fort Worth and to Oklahoma City from points in Texas, still the Commission does not think that whatever discrimination results from the difference between the Texas scale and this Commission's scale can be pronounced undue, or that this situation is one with which this Commission can properly deal.
8. The southeastern territory to which the 3-cent differential on fresh meats and packing-house products from Fort Worth applies, described in greater detail.
9. While still of the opinion that rates from both Kansas City and Wichita to Memphis for these respective territories ought to exceed that from Oklahoma City by 2½ cents per 100 pounds, the Commission will not at this time require carriers from Wichita to increase the differential to that amount, but will leave the present adjustment in effect.
10. Question of rates on green salted hides, fertilizer, and fertilizer material to certain points from Oklahoma City retained for further consideration and report.
11. Reasonable rates on packing-house products and fresh meats from Oklahoma City and Fort Worth to Kansas City prescribed for the future.
12. Southern carriers may very properly meet from both Oklahoma City and Fort Worth via Memphis and Vicksburg the rates on packing-house products and fresh meats established via St. Louis to New York and other eastern territory. This Commission has recently granted its dispensation under the fourth section permitting such carriers to meet these rates and to maintain at the same time higher rates to intermediate territory, but the Commission can not recognize the force of the contention that the rate itself should be established through these gateways.
13. Application of the city of Wichita for various modifications of the original report discussed and passed upon.
14. Carriers should publish tariffs according peddler-car service for the transportation of packing-house products and fresh meats.

Cassoday, Butler, Lamb & Foster, J. A. McNaughton, C. O. Cornwell, and *W. J. McKone* for Wichita interests.

G. A. Henshaw and *C. B. Bee* for Corporation Commission of Oklahoma.

John Marshall for Kansas Railroad Commission.

C. H. Brooks for Union Stock Yards.

Dale & Amidon for Dold Packing Company.

Thomas Creigh for Cudahy Packing Company.

James C. Jeffery for Fort Worth Stock Yards Company.

A. R. Urion and *C. J. Faulkner, jr.,* for Armour & Company.

Albert H. and *Henry Veeder* and *L. C. Ehle* for Swift & Comp[illegible]

L. M. Walter for Morris & Company and Sulzberger & [illegible] Company.

S. H. Cowan for Cattle Raisers' Association of Texas and Ame[illegible] National Live Stock Association.

T. F. Steele for Alabama & Vicksburg Railway Company [illegible] Vicksburg, Shreveport & Pacific Railway Company.

H. G. Herbel and *Fred G. Wright* for Missouri Pacific Ra[illegible] Company and St. Louis, Iron Mountain & Southern Ra[illegible] Company.

N. M. Leach for Texas & Pacific Railway Company and I[illegible] national & Great Northern Railway Company.

W. F. Dickinson, *W. T. Hughes*, and *S. H. Johnson* for Chi[illegible] Rock Island & Pacific Railway Company and Chicago, Rock Is[illegible] & Gulf Railway Company.

Fred H. Wood, *J. A. Middleton*, and *F. C. Reilly* for Frisco L[illegible]

F. C. Dillard and *H. A. Scandrett* for Houston & Texas Ce[illegible] Railroad Company; Galveston, Harrisburg & San Antonio Rai[illegible] Company; and San Antonio & Aransas Pass Railway Company.

W. W. Miller for Missouri, Kansas & Texas Railway Company [illegible] Missouri, Kansas & Texas Railway Company of Texas.

E. B. Boyd for Missouri Pacific Railway Company and Texa[illegible] Pacific Railway Company.

F. B. Houghton, *D. L. Meyers*, *J. L. Coleman*, and *A. G. Merri*[illegible] Atchison, Topeka & Santa Fe Railway Company.

F. A. Leland for southwestern railway lines.

Supplemental Report of the Commission.

Prouty, *Chairman:*

The situation disposed of in the original report, 22 I. C. C., [illegible] was a complicated one, which the Commission attempted to solve [illegible] applying in the main certain mileage rates upon live stock and [illegible] product of the packing house. Recognizing that the exact resu[illegible] the application of these mileage schedules could not be foretold a[illegible] that situations were almost certain to arise which had not been c[illegible] to the attention of the Commission nor considered by it, we made [illegible] order at the time of promulgating our decision and allowed all par[illegible] to file, on or before a date named, applications for a modificatio[illegible] the conclusions reached. Many of the rates prescribed have b[illegible] established and are now in force, but the Cattle Raisers' Associa[illegible] of Texas and the National Live Stock Association, representing [illegible] live-stock interests in the southwest, have filed a petition for m[illegible] [illegible]tion, as have also Oklahoma City, Fort Worth, and Wich[illegible] [illegible] petitions will be considered in the order above named.

CATTLE RAISERS' ASSOCIATION OF TEXAS.

The application of this petitioner is for a modification of the live-stock rates established, the allegation being—

First. That the rates are too high, especially for the longer distances; and,

Second. That 2½ cents should not be added for an additional line haul.

In support of its first contention, that the rates are too high, the petitioner points to the fact that live-stock rates prescribed by the Commission of Texas are distinctly lower than those suggested by us. This fact was fully considered in the original report. The desirability of conforming our rates as nearly as possible to those established by the Texas Commission was realized, but we were unable to feel that we could properly require carriers to maintain as low rates as those established by the Texas schedule. Further reflection has not altered our impression in this respect.

In *Cattle Raisers' Asso. of Tex.* v. *M., K. & T. Ry. Co.*, 11 I. C. C., 296, this Commission found reasonable certain rates from these points of origin in the southwest to Kansas City and other northern markets of consumption, and this decision was subsequently approved by the courts. The Cattle Raisers' Association now insists with great earnestness that the mileage rates which we have prescribed for the movement of live stock to Fort Worth, Oklahoma City, and Wichita are higher than those approved by the Commission in that case.

As stated in the original report, the rates approved by us in the *Cattle Raisers' case* were largely constructed by groups. The propriety of these groupings was in no way submitted to the Commission nor passed upon by it in that proceeding.

In attempting to show that the mileage schedule of the Commission is higher than the rates approved in the *Cattle Raisers' case*, counsel for the petitioner has attached to his petition for modification a list of points, from most of which rates have been advanced. From this list the following examples are selected, showing the distances to Kansas City and the rate:

From—	Mileage.	Rate
Spofford, Tex.	977	48½
Richmond, Tex.	789	48½
San Angelo, Tex.	734	40

It will be noted that the rate from Spofford and Richmond is the same, although the distance varies by nearly 200 miles, while the rates from Richmond and San Angelo differ by 8½ cents per 100 pounds, although the difference in distance is but slightly in excess

of 50 miles. Manifestly it must be easy, by selecting the most distant point in a given group and comparing that rate with the mileage scale, to show that the mileage scale apparently works an increase, when in fact it does not.

From a somewhat careful examination of the matter we reached the conclusion that the shorter-distance rates resulting from the application of the mileage scale would be somewhat less and the longer-distance rates somewhat more, on the average, than the rates approved in the *Cattle Raisers' case.*

As stated in the original opinion, these mileage scales are not prescribed as ideally correct, but rather to fit the situation before us. The live-stock rates prescribed are for the transportation of live stock to Forth Worth, Oklahoma City, and Wichita. Whenever a distance of over 500 or 600 miles from these centers is attained, greater distances run into territory in which traffic is extremely light and where the general level of railroad rates is properly high. This is not so in every instance, but it is so upon the whole. While ordinarily we might not project the same increase per mile for distances of 1,000 miles which was employed for a distance of 600 miles, it was felt that under the circumstances of this case it ought to be done.

There seems to be an impression that carriers will be permitted to advance their rates to Kansas City as a matter of course, in all instances where our mileage scale would result in a higher rate than that now in effect, but this assumption is entirely without warrant. These rates to Kansas City were approved as a whole, and the mere fact that particular rates, or even all rates from a particular section, happen to be higher or lower than the mileage scale prescribed in this case, is no conclusive reason why we should permit a change in those rates.

In the original opinion the purpose of the Commission was to establish a reasonable scale for the movement of the live animal to the packing house, which should, as far as possible, put Fort Worth, Oklahoma City, and Wichita upon an equality with one another, and which should also, as far as might be, establish a just relation in these rates upon the live animal to the three markets named in comparison with Kansas City.

After carefully considering several plans proposed by the carriers and the parties in interest, we reached the conclusion that this purpose could be best accomplished by applying a mileage schedule. Having listened carefully to the criticisms directed by all the localities against this scale, for no one of them is satisfied, and having carefully weighed the propositions advanced by each, for they all have a different solution of their own, we are still persuaded that this scale is in the main just to the carrier and to the shipper and that it comes more nearly

to the accomplishment of the purpose in view than any other method which could be adopted. We must therefore decline to modify the mileage scale for the movement of live stock originally prescribed.

The Commission allowed 2½ cents for an additional line haul, and the Cattle Raisers' Association urges that this was error.

Ordinarily, the allowance of 2½ cents per 100 pounds over and above the rates prescribed upon a mileage basis, in consideration of the fact that the traffic is handled by two separate lines would be certainly a liberal allowance as applied to the movement of live stock, amounting as it would to between $4 and $5 per car; but we felt that the conditions of the movement to these markets was somewhat exceptional.

It often happens that main-line railroads in constructing rates by the shortest-distance route, especially to Oklahoma City, will find it necessary to short-haul themselves. Much of this traffic in the southwest originates upon independent branch lines, or comparatively short lines where traffic is light and rates high. On the whole, it did not seem that, as applied to the movement of this live stock under actual conditions existing in the southwest, the 2½-cent allowance was excessive.

We still adhere to that opinion, so far as the shorter distances are concerned, but are inclined to modify our conclusion as to the longer distances. The addition for a two-line haul is somewhat akin to that for a terminal service. A mileage scale ordinarily yields a much higher rate in proportion for a short haul than for the long one; and when, therefore, two short hauls are combined, it is usually unjust to require the two carriers to accept compensation at the rate per mile applied for the entire long haul. To a degree they are entitled to a higher rate, in consideration of the fact that their individual hauls are short. Now, as distance increases the force of this consideration decreases. When distances of over 500 miles are involved, the fact that the service is by two lines is largely negligible. Upon further reflection we are inclined to sustain the contention of the Cattle Raisers' Association with respect to distances of over 500 miles.

Our conclusion therefore is that no addition on account of the two-line haul should be made where the distance exceeds 500 miles. In no case for a shorter distance should more than one addition be made, and there should be no addition where the two lines are part of the same system, as, for example, the Atchison, Topeka & Santa Fe and the Gulf, Colorado & Santa Fe, which are really one and the same road.

It is unnecessary to say that, in making the above observations as to the additional allowance for the two-line haul when long distances are involved, it was not intended to intimate that a short line should be confined in its division of the joint rate to merely the amount

which an application of the mileage scale would produce. What is a fair division between carriers is to be determined in each case upon the merits of that particular case.

Our attention is called, both by the Cattle Raisers' Association and by other parties in interest, to the fact that the application of our mileage scale from El Paso to Oklahoma City would materially advance the present rate to those packing houses. The rate in effect when our original report was promulgated, from El Paso to Oklahoma City, was 38 cents, while under the mileage scale it would be 42 cents.

Very considerable quantities of live stock are shipped from El Paso to various packing centers. No through rates exist from points beyond El Paso and it seems probable that the greater part of these shipments consist of carloads which have originated at some point beyond and come into El Paso either upon the local rate or upon a proportional rate for movement beyond. In other words, the movement from El Paso is not a local movement.

This being so, it is our opinion that the former rate of 38 cents to Oklahoma City should be continued as a proportional rate, applicable to the movement of live stock which has already come into El Paso by rail, and that the mileage scale should be confined exclusively to the local movement from El Paso.

The Cattle Raisers' Association of Texas, and also other parties in interest, direct our attention to the fact that carriers in applying the mileage scale suggested have not used the direct line when that is made up of two or more different lines of railway, but have rather applied that scale to their own circuitous route. We are asked to establish at the present time through routes and joint rates by the direct line.

The statute provides that in establishing joint rates and through routes each carrier against which the order is made shall be given the benefit of the long haul by its own line "unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established." We can not, therefore, establish in every case a through route and a joint rate, but must work under the limitation imposed by the act of Congress as above set forth.

The transportation of live stock demands, above almost any other kind of freight, expedition in service. Cattle or other live animals should be gotten to the market at the earliest possible moment and with the least possible railroad haul. Considering, therefore, the nature of the transportation, almost any additional length of haul would render the route unduly circuitous and would justify us in establishing a joint rate over the direct line even when a two-line haul was involved.

We can not, however, make any general order which will meet this situation, but must apply our mandatory process to particular cases, which must be presented and considered upon their individual merits.

It is our belief that in the great majority of instances carriers should establish through routes and joint rates via all reasonably available direct lines. If in any case they fail to establish such route and rate, any complaining party may call the attention of the Commission to that particular instance by intervening petition filed in this proceeding, which will thereupon be served upon the defendants and the case disposed of after investigation as may seem just. This is apparently as far as we can properly go under the statute now existing.

The Cattle Raisers' Association also contends that the rates prescribed should apply only to the movement of beef cattle to markets of slaughter, and not to stock cattle.

The Commission has recently held, after careful consideration, that rates in effect to the principal markets of consumption upon fat cattle should not apply to stock cattle, and that the stock-cattle rates should not exceed 75 per cent of the beef-cattle rate. *Investigation and Suspension Docket No. 55*, 23 I. C. C., 7. Since the rates prescribed in this proceeding were intended primarily to cover the movement of fat cattle to the packing house, there is no apparent reason why the above holding should not apply here. We are of the opinion that rates on stock cattle ought not to exceed 75 per cent of the rates prescribed by us for the movement of beef cattle.

OKLAHOMA CITY.

The packing houses at Oklahoma City and the railroad commission of the state of Oklahoma unite in asking us to modify our live-stock rates, on the ground:

First. That they are excessive; and

Second. That they unduly discriminate against Oklahoma City.

The claim that these rates are unreasonably high has already been disposed of in considering the petition of the Cattle Raisers' Association of Texas. The Oklahoma commission, however, further objects that these rates discriminate against Oklahoma City in comparison with rates from the same points of origin to Kansas City, and also in comparison with rates from points of origin in Texas to Fort Worth.

Oklahoma City asserts that rates to that slaughtering market resulting from our mileage scale are higher than existing rates for corresponding distances to Kansas City. What has just been said in answer to this same claim put forward by the live-stock interests need not be repeated here. On the whole, there is, in fact, no discrimination of this sort. For the shorter distances Oklahoma City

pays somewhat less; for the longer distances it may pay slightly more, mile for mile, than does Kansas City. On the average, rates are substantially the same.

It is true that rates into Oklahoma City and from Oklahoma City to Kansas City are, in most instances, higher than the rate to Kansas City, and that ought to be so, since it seldom happens that the direct line from the point of origin to Kansas City is through the Oklahoma market.

Fort Worth and Oklahoma City draw their cattle very largely from Texas points. Fort Worth pays the Texas commission scale, while Oklahoma City must pay the interstate rate established by our mileage scale. Since our rates exceed those of the Texas commission, it is undoubtedly true that packing houses at Oklahoma City do suffer a disadvantage to some extent—in the longer distances to a very marked extent—in this particular. Oklahoma City insists that this discrimination falls within the rule enforced by this Commission in the *Shreveport case*, 23 I. C. C., 31, and should be dealt with accordingly; but such is not our opinion.

The live-stock rates established by the commission of Texas apply uniformly in all parts of that state. They were prescribed long before there was a packing house either at Fort Worth or Oklahoma City and were not made with any intent to discriminate in favor of the Texas industry. They are part of a general schedule of rates established by that commission, and while they are lower than we are inclined to fix, they may be, when considered as a part of the general scheme of the Texas commission, entirely just and reasonable. While it would certainly be desirable if the same scale of live-stock rates applied both to Fort Worth and to Oklahoma City from points in Texas, still we do not think that whatever discrimination results from the difference between the Texas scale and our own can be pronounced undue or that this situation is one with which this Commission can properly deal.

Packing houses at Oklahoma City desire to sell their product in Arkansas and Louisiana, and they there come into competition with packing houses not only at Fort Worth and Wichita but also at Kansas City, St. Louis, and points north. Rates at present in effect from Wichita, Kansas City, and St. Louis to many points in these two states are lower than would result from the application of our mileage scale. If, therefore, the present rates from these northerly packing houses are continued in effect and our mileage scale is applied from Oklahoma City, a discrimination against that locality results.

The position of Oklahoma City in this respect is well taken. The situation was not called to our attention upon the original proceed-

ing and was not considered. It has, however, been discussed and disposed of in *Investigation and Suspension Docket No. 93, ante,* page 652, and need not be further referred to here.

The original opinion held that Fort Worth was entitled to an advantage of 3 cents per 100 pounds, in case of both fresh meats and packing-house products, to what was designated as southeastern territory. Since this territory could be reached from both Oklahoma City and Fort Worth through either the Memphis or the Vicksburg gateways, it was suggested that this differential should be brought about either by advancing the rate from Oklahoma City or reducing that from Fort Worth to both Memphis and Vicksburg, when for beyond to points in this territory. In fact, rates from Fort Worth were reduced 3 cents per 100 pounds to both these gateways; but Oklahoma City insists that this reduction was applied not merely to points in the southeast as defined by the Commission, but to a great number of other points to which no differential ought to be allowed its competitor.

The Commission stated in its opinion that the southeast embraced Alabama, Georgia, and Florida. This was not intended to be, however, an exact territorial definition, but rather a general indication of the locality involved. Our understanding was that the tariffs of the defendants recognized a defined territory known as the southeast, which roughly agreed with the limits of these three states. This impression was derived from the oral testimony upon the hearing and not from an examination of the tariffs themselves.

It appears that, in fact, these three states, with the exception of a certain portion of western Alabama, are embraced in what is known as southeastern territory, but that in addition there is a narrow strip running to the north and west of the Carolinas and agreeing generally with the route of the Southern Railway from Birmingham through Johnson City to Bristol and thence via the Norfolk & Western, to which southeastern rates have been applied in the past.

The reasons which led the Commission to suggest a 3-cent differential in favor of Fort Worth to southeastern territory could not, upon any view of the matter, embrace this strip of territory to the northwest of the Carolinas, nor should Fort Worth have the benefit of the 3-cent differential to that territory. In our opinion the territory entitled to this differential is bounded upon the north by a line beginning at Greenville, Miss., and extending east along the line of the Southern Railway to Birmingham, thence via the Southern Railway to Atlanta, thence via the Georgia Railroad to Augusta, and thence via the Southern Railway to Charleston. To all points on and south of this line the 3-cent differential from Fort Worth should apply, but to points north of this line rates should be the same up

to the Memphis and Vicksburg gateways from both Oklahoma City and Fort Worth.

There may be points to the south through which rates have been made from New Orleans where the differential in favor of Fort Worth should be greater, and there may be other points upon the north to which rates make through St. Louis, where differentials would be established upon the basis prescribed for that gateway. We refer now to points to which rates properly make through Vicksburg and Memphis.

Wichita enters southeastern and Carolina territory through the Memphis gateway. When the original report was promulgated rates upon both fresh meats and packing-house products were 1½ cents per 100 pounds higher from Wichita than from Oklahoma City, but in consideration of the shorter distance from Oklahoma City the Commission expressed the opinion that this difference should be increased to 2½ cents. This has not been done and Oklahoma City now asks that the original suggestion be enforced.

Wichita comes into sharp competition with Kansas City in both the southeast and the Carolinas. The rate from Kansas City to Memphis is the same as from Wichita and carriers serving Kansas City through that gateway decline to advance the present rate. This situation was not called to the attention of the Commission upon the original hearing, but is now strongly urged as a reason why carriers from Wichita ought not to be required to advance their rates from that producing center.

The Commission is of the opinion that under all the circumstances this position is well taken. The rate from Wichita to this territory ought not to be advanced unless that from Kansas City is also increased by a corresponding amount, which can not, apparently, be done. While still of the opinion that rates from both Kansas City and Wichita to Memphis for these respective territories ought to exceed that from Oklahoma City by 2½ cents per 100 pounds, we shall not at this time require carriers from Wichita to increase the differential to that amount, but shall leave the present adjustment in effect.

Oklahoma City asks the Commission to prescribe rates on green salted hides and fertilizer and fertilizer material to certain points from Oklahoma City. This we are not prepared to do without some further investigation, and the subject will be retained to be disposed of in an additional report at a later day.

The Commission held in the original proceeding that the local rate on fresh meats and packing-house products from Oklahoma City to Kansas City should not exceed that from Wichita to Kansas City by more than 40 per cent, and from Fort Worth by more than 75 per

cent. The rates from Wichita to Kansas City at that time were 12 and 18½ cents, respectively, and in accordance with our suggestion rates from Oklahoma City were reduced to 17 cents on packing-house products and 26 cents on fresh meats.

Subsequently leave was obtained from the Public Utilities Commission of Kansas to advance rates from Wichita to Kansas City, Kans., from 12 to 17 and from 18½ to 21 cents, and thereupon corresponding advances were made from Oklahoma City and Fort Worth.

It appears, however, that the order of the Utilities Commission of the state of Kansas permitting the advance on packing-house products excepted from its operation certain specified commodities, like dry salted meats, sweet pickled meats, unrefined lard, tallow, and hides, etc., and that these commodities make up about 90 per cent of all the packing-house products which are in fact moved by packers at Wichita from Wichita to Kansas City. These same commodities are not moved to the same extent from Oklahoma City and Fort Worth to Kansas City, so that while there has been an advance from Wichita upon the commodities which Oklahoma City ships there has been no advance upon those commodities which Wichita ships.

This is a clear evasion of the spirit of our decision. We felt, in disposing of the original case, that 12 cents and 18½ cents were rather low rates from Wichita to Kansas City and were not disposed to compel the establishment of equally low rates from Oklahoma City and Fort Worth, provided a proper relation was observed between these competing shippers. There is, however, no distinction between those packing-house products upon which the rate from Wichita has been advanced and those upon which it still remains at 12 cents. Upon a further examination of the matter we are of the opinion that the rates of 12 cents on packing-house products and 18½ cents on fresh meats, which were in effect by the voluntary action of the carriers from Wichita to Kansas City, were, under all the circumstances, just and reasonable; that rates of 17 cents from Oklahoma City and 21 cents from Fort Worth upon packing-house products and 26 cents from Oklahoma City and 32½ cents from Fort Worth on fresh meats would be just and reasonable rates, and we shall direct their maintenance for two years. These rates are, however, lower than the mileage scale which we have prescribed, and the carriers may at any time apply to the Commission for a modification of the order in this respect, showing the changes which they desire to make and the reasons therefor.

FORT WORTH.

In the original opinion proportional rates were established from Fort Worth and Oklahoma City to both Memphis and Vicksburg,

for southeastern territory and for Carolina territory, but no proportional rates were fixed for trunk line territory. Fort Worth now insists that such rates should be established and that if that locality is given the benefit of its proximity to Vicksburg the rate to New York and similar territory will make through that gateway, resulting in a less differential upon both fresh meats and packing-house products to New York and other Atlantic seaboard territory than at present results from the application of the differentials established by the Commission to St. Louis.

In the past, the rate to trunk-line territory has made in all cases through St. Louis, except possibly to the Virginia cities. No question was made upon the hearing but what the rate ought to make through that gateway. The question now presented was not therefore before the Commission in the former proceeding. Treating New York as representative of the eastern territory involved, that question is, Ought the rate from Fort Worth to be constructed through the St. Louis gateway or through the Vicksburg gateway?

The Fort Worth interests base their contention entirely upon the proposition that the distance in miles is less via Vicksburg than via St. Louis, these distances being:

Fort Worth to New York, via—	Miles.
St. Louis	1.731
Memphis	1,660
Vicksburg	1.674

If, therefore, mileage is controlling, the rate ought to make via Memphis or Vicksburg, and since Fort Worth is 893 miles from Vicksburg and 503 from Memphis, according to the figures given by Fort Worth, the lowest combination from that point of origin would probably be through Vicksburg.

Fort Worth urges that the Commission established the proportional rates up to the Mississippi River in reference to mileage, and therefore that the same rule should be observed in fixing these New York rates. But the Commission took the relative distances from these packing houses up to the various Mississippi River gateways for the purpose of determining the relative advantage which each locality should enjoy through a particular gateway; it did not undertake to say that the rate up to the river should in all cases depend upon distance. The carriers themselves had made a different proportional rate when the traffic was intended for the southeast from that applied to Carolina business, although the distance and the service were identical. The Commission in establishing its differentials did the same thing. If the New York rate can properly make through the Vicksburg gateway from Fort Worth, then certainly Fort Worth is entitled to a proportional rate to Vicksburg which bears a fair relation, as determined by distance, to the proportional rates from Okla-

homa City and Wichita to St. Louis, upon traffic intended for the same point.

It is not enough, however, to show that in miles the distance is less from Fort Worth via Vicksburg than from Fort Worth via St. Louis. It must be shown that the cost of transportation is less, or rather that the combination of rates is less as estimated by the general level of rates in the territory through which the transportation is conducted.

Southern carriers have insisted time and again before this Commission that, mile for mile, rates should properly be much higher in southern territory than in territory north of the Potomac and Ohio Rivers. This traffic en route from Fort Worth to New York, via Vicksburg, might pass through Bristol or it might go through Greensboro. The local rate from Fort Worth to Bristol by this route is 89 cents on fresh meat; to Greensboro 87 cents. When it is remembered that the rate to New York via St. Louis on fresh meat is but 85½ cents, and that when this traffic arrives at Bristol, under a rate of 89 cents, it is still 606 miles from New York; at Greensboro, under a rate of 87 cents, 516 miles from New York, the absurdity of the claim that these rates on fresh meats and packing-house products, which must be transported by rail and which do not feel the effect of water competition, can with propriety be said to make from Fort Worth to New York, via Vicksburg, becomes apparent.

These southern carriers may very properly meet from both Oklahoma City and Fort Worth via Memphis and Vicksburg the rates established via St. Louis to New York and other eastern territory. This Commission has recently granted its dispensation under the fourth section permitting them to meet these rates and to maintain at the same time higher rates to intermediate territory, but we can not recognize the force of the contention that the rate itself should be established through these gateways.

WICHITA.

The city of Wichita asks the Commission to modify its report in the following particulars:

1. As to rates on fresh meats and packing-house products, to points in Arkansas and Louisiana.

2. As to rates on dressed beef and packing-house products from Wichita to Memphis, when destined to southeastern and Carolina territories.

3. To establish less-than-carload rates from Wichita to various points in Oklahoma, Texas, and New Mexico.

4. To modify its mileage scale of live-stock rates.

5. To establish rates on live stock from Colorado points to Wichita.

6. To modify generally its mileage scale for fresh meats and packing-house products.

7. To enter an order requiring carriers to establish through routes and joint rates applicable to the movement of live stock, fresh meats, and packing-house products.

8. To establish a proportional rate of 19½ cents for the movement of dressed beef and packing-house products from Wichita to the Mississippi River, when for beyond.

Points 1, 2, 4, and 7 have already been disposed of in this report.

The Commission must decline to modify the rates already prescribed by it for the movement of dressed beef and packing-house products, as requested in point 6.

If Wichita desires the Commission to pass upon the reasonableness of live-stock rates from Colorado points to Wichita, as suggested in point 5, an independent complaint should be filed. That subject has not been and will not be considered under the present investigation.

The Commission must decline to make the modification requested in point 8. The conclusion reached in the original report was that no lower rate than 24½ cents could be properly established for the transportation of dressed beef and packing-house products from Wichita to the Mississippi River, for beyond, and to that conclusion we adhere.

This leaves for further consideration point 3. In the original report only carload rates were established, but it was said that if the actual necessity for the establishment of less-than-carload rates for the distribution of fresh meats and packing-house products in this territory existed, this matter might be called to our attention, and would be further considered. Both Oklahoma City and Wichita now urge that we establish what are known as peddler-car rates, which seem to take the place of less-than-carload rates in the distribution of the products of these packing houses in this territory.

The operation of the peddler car is as follows:

The car is iced, for the service must in all cases be under refrigeration, and loaded by the packer, with fresh meats and packing-house products, in whatever quantity and proportion may be desired. The car is then transported to the first unloading point, where it is opened and a portion of the contents removed. From thence is goes to the next unloading point, and so on to its final destination. The work of unloading is performed by the employees of the carrier in the same manner that local freight is unloaded at the various stations, no special or additional storage facilities being provided. The initial icing is by the packer, and if any subsequent icing is needed the packer pays for the ice actually used.

The carriers concede that this service or its equivalent ought to be established generally in the territory to which our rates on fresh meats and packing-house products have been made applicable. It seems to

be practically agreed by all parties that for this service the rate on packing-house products should be approximately 130 per cent of the carload rate, and upon fresh meats approximately 150 per cent of the carload rate. It is also agreed that the carrier may properly protect itself against a light loading by specifying in its tariff the minimum earnings of the car.

We are of the opinion that the carriers should forthwith publish tariffs according this peddler-car service; that the rate upon packing-house products should be 130 per cent and upon fresh meats 150 per cent of the carload rate; and that a minimum may be required equivalent to the earnings upon 10,000 pounds of fresh meat to the most distant point.

Refrigeration should be provided or paid for by the shipper in addition to the above rates.

Our understanding is that the rates prescribed by the Commission for the movement of both live stock and the product have been established upon individual lines, and that the rate of 38 cents upon live stock from El Paso to Oklahoma City is now in effect. Alleged neglect to comply with the suggestions of the original opinion consist mainly in failure to establish through routes and joint rates by the direct line. We have already said that no general order can be made covering this situation, which must be dealt with in piecemeal. In those respects in which this supplemental report modifies, adds to, or interprets the original report we shall rely upon carriers to observe the suggestions herein made.

An order will be issued now requiring carriers to maintain rates found reasonable from Oklahoma City and Fort Worth to Kansas City, and the case will be retained for further proceedings.

No.

SOUTHERN ILLINOIS

LOUISVILLE & NASHVILLE

Submitted April 5, 191

Defendants' rates on flour and other gra
to the Atlantic seaboard found not
of the fourth section, nor unduly
mills at St. Louis; but d
upon all lines by which t
at a penalty not exce

W. O. Bartholomew for complai
John G. Williams for Vandalia
William A. Northcutt and *Al*
Nashville Railroad Company.
Edward Barton, William A
for Baltimore & Ohio Railroad C
western Railroad Company, and
Railway Company.
Claudian B. Northrop and *Edw*
Company
R. V. Fletcher, Blewett Lee, and
Railroad Company

REPORT OF TH

PROUTY, *Chairman:*

The members of the complaina
southern Illinois and the defenda
from St. Louis, upon the west,
complaining mills are situated, to
plaint is that the defendants main
grain products from these mills
contemporaneously maintained fr
The rate at the present time upo
from St. Louis to Boston. The
complainant is 24.7 cents to the

which obtains in case of Atlantic seaboard territory generally. The complainant alleges that this adjustment of rates is in violation of the act to regulate commerce:

1. Because the rates from the complainant mills are unreasonable in and of themselves.

2. Because the rates are in violation of the fourth section, in that more is charged from the intermediate than from the more distant point.

3. Because this adjustment of rates unduly discriminates against the mills of the complainant in violation of the third section.

UNREASONABLE PER SE.

There is nothing in this record to sustain the allegation that these rates are unreasonable in themselves except the fact that the defendants voluntarily maintain lower rates from St. Louis for a longer haul, which is not very persuasive, since, as will presently be seen, the rate from St. Louis is really a division of a through rate from the western point of origin, which should be somewhat less than the local rate and which can not be used as a conclusive standard by which to measure the reasonableness of these intermediate rates.

The average distance from these complaining mills to Boston is at least 1,000 miles, so that the rates attacked yield a per-ton revenue of somewhat less than 5 mills, which can not be deemed excessive.

The rates themselves are no higher, distance considered, than many of those recently approved by us in *Baltimore Chamber of Commerce* v. *B. & O. R. R. Co.*, 22 I. C. C., 596.

The claim of inherent unreasonableness is not sustained.

THE FOURTH SECTION.

The Commission in its Conference Ruling 304 stated that, in determining whether the fourth section was contravened, rates of the same class should be compared with one another and that transshipment rates and proportional rates should not be compared with local rates. If, therefore, these rates from St. Louis are reshipping or proportional rates, as claimed by the defendants, there is no violation of the fourth section.

These rates from St. Louis are designated in the tariffs of the defendants as specific rates and it is insisted by counsel for the defendants upon the argument that they are equivalent to proportional or reshipping rates and not therefore to be compared with the local rates paid by the mills of the complainant association.

The rates from St. Louis apply on grain or the products of grain originating west of that market and often west of the Missouri River. This grain in its progress from the field where it grows to the point

event the through rate from such point of origin would be less than that from the intermediate station in southern Illinois; but no instances of this character were pointed out, nor do we upon examination find that any exist, although the tariffs on file with us are not conclusive upon this point.

The complainant calls attention to the fact that while these rates are maintained to apply only to grain which has been brought into St. Louis by rail, in fact the surrender of no billing is required. The record shows that 290,000 bushels of wheat were hauled into St. Louis by wagon during the year 1910, and under the present system this grain might have the benefit of the low rate if sent forward in the form of wheat or flour at St. Louis.

This is undoubtedly true, and it is also true that if this wheat in fact goes forward it enjoys a better rate than that to which it is strictly entitled. But in considering these rate situations we must be governed by practical considerations. The amount of wheat consumed in St. Louis much exceeds the amount hauled in by wagon. Nothing would be gained by requiring the surrender of expense bills unless a system of policing were established and maintained at great expense, and even then the thing aimed at would not be accomplished unless the identity of the grain itself were preserved. It would be possible to provide that this local wagon wheat should be kept by itself and either ground into flour for consumption in St. Louis or transported to the east in the form of flour or wheat at a rate higher than the specific rate. But all this would be expensive, would not materially, if at all, benefit the complainant, and seems unnecessary under all the circumstances.

The complainant urges that the entire through rate should be published from each point of origin to final destination and that elevation or milling should be allowed at all points en route alike, which would result in equal treatment to all.

Such was the original plan. Grain might move from the field to the east through St. Louis, for example, from many points of origin with the right to mill or elevate at St. Louis. Under this system the grain paid a certain rate into St. Louis and what was known as the balance of the through rate when it went forward. Since the division of this through rate which was allowed to lines east of St. Louis varied with the point of origin, it resulted that the balance of the through rate differed, and this presented opportunity for manipulation of billing. In a market like St. Louis, where there is a large local consumption and where, therefore, surplus billing to a considerable amount could always be had, it was possible by the crossing of billing, by selecting of the most favorable billing, and by other practices, to defeat the through rate so that this system, while in theory entirely

This Commission has several times said that for the additional service involved in the granting of the milling-in-transit and similar privileges an additional charge may properly be made, and it can not be questioned that one-half cent per 100 pounds is reasonable for that service. If, therefore, reference is to be had simply to the transportation of this grain or flour from St. Louis to the Atlantic seaboard, the defendants are plainly right in their contention.

But such is not the case. While these defendants do take up this traffic for the first time at St. Louis, their service is part of a through transportation. The defendants themselves expressly so claim. This Commission in deciding *Baltimore Chamber of Commerce v. B. & O. R. R. Co., supra*, said:

> It is insisted that the proportional or reshipping rates from Chicago and the other points named in the second table are in fact nothing but local rates; that the name "reshipping," as at present in use, is but a cloak to cover the real nature of the rates; that grain in elevators at said points is local grain, and the rates under which it moves out are therefore local rates.
>
> Undoubtedly a movement is either through or local; there is no middle ground; but to say that movements of the character referred to are local, as distinguished from through movements, would be to hold that the tariffs which provide transit privileges at the points named are unlawful. Such tariffs have been in recognized use too long to be condemned on the meager evidence here presented.

Now, if the handling of this business from St. Louis east is part of a through service, these defendants must within proper limits stand responsible for their connection with that entire service. They can not in one breath justify one discrimination against this complainant by asserting that their rate is part of a through rate, and justify another discrimination by asserting with the next breath that the service is strictly local.

The incidental discrimination which results from the publication of this kind of a tariff may be overlooked, since it can not well be avoided, but the substantial disadvantage under which these complainants are put by the charging of this milling-in-transit penalty, while their competitors at St. Louis whose flour is also handled by these defendants are charged nothing, is a substantial discrimination which in our opinion is undue and should be corrected.

Some of the defendant lines impose what is in effect a penalty of much more than one-half cent per 100 pounds for the milling-in-transit privilege east of St. Louis. The Louisville & Nashville, for example, charges mills upon its line 2.5 cents per 100 pounds for transporting the grain from St. Louis to the mill and 24.7 cents per 100 pounds for carrying the product from the mill, thus making the cost of milling-in-transit 5.5 cents above the rate paid by the St. Louis miller.

The Louisville & Nashville justifies this upon the plea that it operates a circuitous route, but we find nothing in this which excuses the

No. 4290.

TRANSPORTATION BUREAU OF THE CITY OF WICHITA, KANS.,

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted March 15, 1912. Decided May 7, 1912.

Present rates for transportation of canned vegetables in carloads from points in Missouri and Arkansas to Wichita, Kans., not found unreasonable in themselves, but found unduly discriminatory as compared with rates on same commodities from same points of origin to Hutchinson, Kans.

A. E. Helm for complainant.

Fred H. Wood for St. Louis & San Francisco Railroad Company.

Fred G. Wright, Martin L. Clardy, and *Henry G. Herbel* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

F. J. Shubert for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Chairman:*

This complaint is brought by the Transportation Bureau of the city of Wichita, Kans., on behalf of certain wholesale jobbers located in that city, who complain that the carload rates on canned vegetables from points in Missouri and Arkansas to Wichita are unreasonable in and of themselves and as compared with the rates on the same commodities to Hutchinson, Kans.

The Missouri Pacific has a through line from points of production on its road to both cities, while the St. Louis & San Francisco road in reaching Hutchinson uses the rails of the Rock Island from Medora, 10 miles from Hutchinson. The rates are sought to be justified by the St. Louis & San Francisco on the ground that the Missouri Pacific names the same rate to both Hutchinson and Wichita, and the Frisco must meet that rate if it wishes to participate in the business. On the other hand, the Missouri Pacific says "we name the same rate to Hutchinson that we do to Wichita because the Frisco names the same rate to Lyons, a point 28 miles northwest of Hutchinson."

opinion that rates upon canned fruits and vegetables should be at least 3 cents per 100 pounds less to Wichita than to Hutchinson, from the following points:

UPON THE MISSOURI PACIFIC.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN.

Alma, Ark.	Elsey, Mo.	Melva, Mo.
Aurora, Mo.	Forrest Mill, Mo.	Melugin, Mo.
Battlefield, Mo.	Fort Smith, Ark.	Opal, Mo.
Bonham, Mo.	Galena, Mo.	Reeds Springs, Mo.
Branson, Mo.	Granby, Mo.	Springfield, Mo.
Brown's Spring, Mo.	Gretna, Mo.	Stotts City, Mo.
Clever, Mo.	Hoberg, Mo.	Terrell, Mo.
Cotter, Ark.	Hollister, Mo.	Van Buren, Ark.
Crane, Mo.	Hurley, Mo.	Wilson Creek, Mo.
Diamondville, Mo.	La Russell, Mo.	

UPON THE ST. LOUIS & SAN FRANCISCO.

Bourbon, Mo.	Cassidy, Mo.	Sarcoxie, Mo.
Crocker, Mo.	Ash Grove, Mo.	Granby, Mo.
Conway, Mo.	Greenfield, Mo.	Joplin, Mo.
Marshfield, Mo.	Aurora, Mo.	Farmington, Ark.
Diggins, Mo.	Butterfield, Mo.	Van Buren, Ark.
Mansfield, Mo.	Bentonville, Ark.	Koshkonong, Mo.
Cabool, Mo.		

No order will be made at this time, but the defendants will be expected, on or before July 1, 1912, to publish tariffs substantially in compliance with this opinion.

No. 4274.

TRANSPORTATION BUREAU OF THE CITY OF WICHIT KANS.,

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET A

Submitted March [illegible], 1912. Decided May 7, 1912.

Rate on dried and evaporated fruits in carloads from nor western Arkansas points over St. Louis & San Francisco Railroad to Wi hi Kans., found not unduly discriminatory as compared with rates on same comm from same points of origin to Hutchinson, Kans.

A. E. Helm for complainant.

Fred H. Wood for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Chairman:*

The rate here questioned is one of 35 cents per 100 pounds c dried and evaporated fruits in carloads from northwestern Arkans points located on the St. Louis & San Francisco Railroad. This con plaint, as was the case in No. 4290, *ante*, page 679, is brought by t transportation bureau of the city of Wichita, Kans., on behalf of i wholesale jobbers. It is alleged that because of the less mileage t Wichita, 312 miles, as compared with 366 to Hutchinson, Kans Wichita is entitled to a lower rate, and that it is unjust to make t same rate to both points.

The St. Louis & San Francisco asserts that it has named the sam rate to both Hutchinson and Wichita for a number of reasons. appears that from these northwestern Arkansas points the short lin to Kansas City is via the Kansas City Southern, which road fixes rate of 20 cents, which the Frisco has to meet if it cares to enga in the business. The rate from Kansas City to both Wichita an Hutchinson is the same, viz. 40 cents. This creates a conditio which, it is alleged, is controlling of the rate which can be charg from the same points of origin to Hutchinson and Wichita. It not contended that the combination on Kansas City makes a rate 35 cents, since it would make one very much higher, but, apparentl it is contended that because Kansas City is a market for this frui as well as for similar fruit from other territory, the rate from Kans City should govern.

While it may be true that Hutchinson and Wichita properly take the same rate on evaporated fruit from Kansas City, this is apparently no substantial reason why rates from these points of production should also be the same.

It was also testified that while the majority of the points taking the 35-cent rate here complained of are local points on the Frisco, there were other similar producing points on the line of the Kansas City Southern, which line parallels the line of the Frisco at a distance of about 20 miles, for something like 82 miles, and that if the Kansas City Southern made a rate of 35 cents from points on its road the Frisco felt in duty bound to make as low a rate from like points on its line. It was not contended that the commodity could be wagoned from Frisco stations to Kansas City Southern stations, but the same rate was made simply because of a desire to see all producers enter the market on an equality.

The complaint alleges that rates from these points of production to Wichita are unreasonable *per se*, but there is no evidence in this record tending to sustain that proposition, and no opinion upon that point is expressed.

The sole question for determination is whether or not the defendant is justified in charging as high a rate to Wichita as it does to Hutchinson, the more distant point, and while the situation as presented in this record is slightly different from that passed upon in the case just preceding, No. 4290, we do not feel that the difference is sufficient to justify a different conclusion. It is our opinion that rates upon evaporated fruits from the points of production shown in the following table to Wichita should be not less than 3 cents under the corresponding rates to Hutchinson.

Points of production in Arkansas.

Brashear.	Gravette.	McNair.	Summers.
Brentwood.	Greenland.	Mountainburg.	Thompson.
Chester.	Gulley.	Patrick.	Turpenny Spur.
Combs.	Harris.	Pettigrew.	Walkers.
Delaney.	Johnsons.	Porter.	West Fork.
Durham.	Lancaster.	Prairie Grove.	Winslow.
Dutton.	Leith.	Rogers.	Woolsey.
Elkins.	Lilburn.	Rudy.	St. Paul.
Farmington.	Lincoln.	Springdale.	
Fayetteville.	Lowell.	Stewart.	

We will make no order in this case, but the defendants will be expected, on or before July 1, 1912, to publish rates substantially in compliance with this opinion.

No. 4462.

TRAUGOTT SCHMIDT & SONS

v.

MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

Submitted January 17, 1912. Decided May 6, 1912.

Complaint alleges that rates on wool from Detroit to Boston, New York, and Philadelphia, and other eastern destinations are unreasonable *per se* and unduly discriminatory as compared with Chicago and St. Louis: *Held*, That, upon the facts disclosed by the record, the allegation of unreasonableness can not be sustained, but that present rates do unduly discriminate against Detroit, whose rates on wool should not for the future exceed 75 per cent of that contemporaneously in effect from Chicago.

Cassoday, Butler, Lamb & Foster for complainants.

D. P. Connell, Clyde Brown, and *O. E. Butterfield* for New York Central lines.

George W. Kretzinger for Grand Trunk Western Railway Company.

Loesch, Scofield & Loesch and *James Stillwell* for Pennsylvania Company and Pennsylvania Railroad Company.

John T. Marchand for Interstate Commerce Commission.

REPORT OF THE COMMISSION.

PROUTY, *Chairman:*

In 1909 Traugott Schmidt & Sons, the complainants in the above case, who are wool dealers located at Detroit, filed complaint with this Commission attacking the adjustment of rates through and from that point. That complaint raised two issues.

First. It was alleged that wool originating at points west of the Missouri River could be stopped off at Omaha, St. Louis, and Chicago for the purposes of grading, sorting, etc., and be sent on to eastern destinations at a total freight charge not exceeding the through rate from the point of origin to final destination, whereas in the case of the complainants at Detroit the full rate must be paid into Detroit and the full rate out, thereby producing a charge materially in excess of the through rate and placing the complainants at a disadvantage in comparison with their competitors at the three points above named, although the cost of the service and the incidents of the service were substantially the same.

Second. There was in effect a 50-cent rate from Chicago which applied as a blanket to territory for a considerable distance east of Chicago, including Detroit. This rate applied in any quantity. Ordinarily rates from Detroit to the Atlantic seaboard are 78 per cent of the Chicago rate, and the complainants insisted that the same rule should be observed in the construction of rates on wool and that failure to observe that rule created an unjust discrimination against Detroit.

After hearing and argument this complaint was on November 14, 1910, dismissed. *Traugott Schmidt & Sons* v. *M. C. R. R. Co.*, 19 I. C. C. 535. Subsequently a petition for rehearing was filed by the complainants and denied.

Upon the first hearing in No. 4074, that being the general wool investigation, Traugott Schmidt & Sons asked to intervene and stated that they would introduce evidence for the purpose of showing that the Commission had acted upon a misapprehension of fact in disposing of the original case. Upon being informed that wool rates east of the Mississippi River would not be considered in that proceeding, the complainants filed this complaint, which was heard together with the general wool investigation and cognate cases. *Wool case,* 23 I. C. C., 151.

The complaint alleges that rates on wool from Detroit to Boston, New York, and other eastern destinations are unreasonable *per se* and discriminatory as compared with Chicago and St. Louis, and prays for the establishment of just and nondiscriminatory rates.

While counsel for the complainants asserts the contrary, it is plain that the matters presented by this present proceeding are the same as those presented by the second branch of the original complaint. That complaint was dismissed only a year and three months before the submission of this case, and this complaint ought to be dismissed as a matter of course unless it appears that the Commission in deciding the original case labored under some misapprehension of fact. While this Commission is not bound by any rule of *stare decisis*, and while its conclusions are not *res judicata*, still when a matter has been once fully considered and decided it must be regarded as settled unless it appears from new facts presented that the Commission was wrong. We can at any time recall and amend our order, and we ought to do so whenever it appears that an order is erroneous, but it must also be assumed that the judgment of the Commission was correct upon the facts as presented. Was the former case decided, therefore, upon any misapprehension of fact?

The first point presented by the original complaint, namely, the right of Detroit in the handling of western wool to the same privilege accorded Chicago and other cities, is not of much importance to the

that contention. Our opinion is the same now. Unless some substantial reason to the contrary is shown, rates from Detroit should bear the ordinary relation to those from Chicago.

In the original case the evidence did point out a sufficient reason. The testimony there showed that the 57½-cent rate from St. Louis was necessary to meet competition through southern gateways; that the establishment of a 57½-cent rate at St. Louis compelled the establishment of the 50-cent rate at Chicago; that the carriers, being compelled by these competitive conditions to establish a 50-cent rate at Chicago, had extended that rate east until a point was reached from which it was not unreasonable to the Atlantic seaboard. This was the ground upon which the Commission rested its decision, and if the establishment of the rate at Chicago was forced, as that case showed, then the conclusion of the Commission was upon familiar principles correct.

Upon the present record it clearly appears that this fact, testified to by representatives of the carriers in the former case and assumed as a fact by the Commission, is not correct. The present evidence leaves it extremely doubtful whether the putting in of the 57½-cent rate at St. Louis and the 50-cent rate at Chicago was influenced by southern competition, but assuming that it was, clearly it would not require the application of those rates to the local movement of wool.

The traffic with respect to which this alleged competition existed originates in the far west and moves to the east by various routes. Assuming that carriers found it necessary to establish a rate of 57½ cents from St. Louis to meet this competition, no reason is suggested and no reason exists why that rate should have been applied to the transportation of wool originating at St. Louis and east. How can it be said that carriers are obliged to apply to the last thousand miles of a 3,000-mile movement rates which they apply to the local movement for the same thousand miles, especially when the movement from the long-distance point is in carloads of from 27,000 to 38,000 pounds, while the local movement is in lots, as this evidence shows, on the average of less than 8,000 pounds to the car?

When the original $2 rate from Union Pacific points to Boston was established, carriers from St. Louis east received 44½ cents for their service. That rate was not apparently applied to the local movement of wool from territory east of the Mississippi River, nor was there the slightest reason why it should have been. This rate was subsequently advanced, until it is to-day 57½ cents, but there is no competitive reason which requires the application of that 57½ cents as an any-quantity rate for the movement of wool originating east of the Mississippi River. It must be found therefore that no competitive conditions disclosed in these proceedings require the maintenance of a 50-cent rate from Chicago.

Neither does it appear that the conditions under which this wool is produced and transported are such as render necessary the application of a blanket rate. We have established for the movement of this commodity from the west a system of graded rates under which the transportation charge depends approximately upon the distance, and no reason is apparent why a different conclusion should be reached with respect to this territory east of the Mississippi River. We are therefore forced to the conclusion that wool rates should be adjusted in accordance with the general scheme of rates applied between central freight association territory and the Atlantic seaboard and that the rate from Detroit should not exceed 78 per cent of that contemporaneously in effect from Chicago. This may result in some increase of the charges under which this commodity is transported, but if those charges as finally established are reasonable and nondiscriminatory there can be no legitimate ground for complaint.

An order will be issued accordingly.

No. 3983.

CORPORATION COMMISSION OF OKLAHOMA

v.

ABILENE & SOUTHERN RAILWAY COMPANY ET AL.

Submitted February 10, 1912. Decided May 7, 1912.

1. Complaint attacks all class and commodity rates from Oklahoma into Texas carried in Leland's southwestern lines tariff, series No. 26, I. C. C. No. 531, as being unreasonable both *per se* and relatively, when compared with the rates on the first four classes from certain Texas jobbing points into Oklahoma. Except for these last-named rates, which are made on the basis of the so-called Oklahoma uniform jobbers' scale, the rates on all classes are made on basis of the so-called standard scale and apply between the states of Oklahoma and Texas. The Oklahoma jobbers' scale is much lower than the standard scale or that of the Texas commission. Upon request that rates be established for application in either direction between these states upon basis of the Oklahoma jobbers' scale: *Held*, That the present rates from Oklahoma into Texas are unreasonable and unjustly discriminatory, and that, while a complete scale of rates on all classes based on the jobbers' scale, now applicable on the first four classes northbound, would perhaps be unduly low for application between the

two states, the southbound rates on all classes and the northbound rates on all classes except the first four should be reduced to a point which in connection with a corresponding increase in the northbound rates on the first four classes will return to the carriers substantially the same revenue as under the present northbound and southbound rates on all classes.

2. In view of the many considerations involved, including the fixing of commodity rates; a proper basis for the panhandle of Texas, where conditions differ from the conditions obtaining in the remainder of the state; arbitraries for two or more line hauls; and other considerations; case held open in order that the respective parties to the complaint may submit, after conference with each other, a proposed scale, in substantial accordance with the views herein expressed, to the Commission for its consideration.

Geo. A. Henshaw and *C. B. Bee* for complainant.

W. V. Hardie for Oklahoma Traffic Association, intervener.

H. G. Struble for Hale-Halsell Grocery Company, intervener.

W. F. Dickinson and *Wallace T. Hughes* for Chicago, Rock Island & Gulf Railway Company; Chicago, Rock Island & El Paso Railway Company; and Trinity & Brazos Valley Railway Company.

T. J. Norton and *A. C. Fonda* for Atchison, Topeka & Santa Fe Railway Company; Gulf, Colorado & Santa Fe Railway Company; Pecos & Northern Texas Railway Company; Pecos River Railroad Company; Texas & Gulf Railway Company; Gulf & Interstate Railway Company of Texas; and Concho, San Saba & Llano Valley Railway Company.

W. W. Miller for Missouri, Kansas & Texas Railway Company.

J. F. Garvin for Missouri, Kansas & Texas Railway Company of Texas.

J. H. Johnston for Missouri, Oklahoma & Gulf Railway Company and Missouri, Oklahoma & Gulf Railway Company of Texas.

F. H. Wood and *E. K. Voorhees* for St. Louis & San Francisco Railroad Company; Beaumont, Sour Lake & Western Railway Company; Fort Worth & Rio Grande Railway Company; New Orleans, Texas & Mexico Railway Company; Paris & Great Northern Railroad Company; and St. Louis, San Francisco & Texas Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner:*

This complaint challenges the reasonableness and justness of all the class and commodity rates carried in Leland's southwestern lines tariff, series No. 26, I. C. C. No. 831, from points in Oklahoma to stations in Texas, as specifically detailed therein. Most of the testimony is confined to representative jobbing points like Oklahoma City and Durant, in Oklahoma, and Dallas, Fort Worth, and Sherman, in Texas. Generally speaking, the Texas territory of prime im-

As illustrative of the present southbound or standard rates and of the Texas groups themselves to and from which these rates apply, the first-class rate via the Santa Fe from Oklahoma City to group 1, which covers the territory north of Gainesville (7.6 miles south of the Red River) is 70 cents; to group 3, for an additional 19 miles to Sanger, 84 cents; to group 5, embracing the additional territory 55 miles south of Sanger to Harris, 85 cents; to group 4, from Harris to Cleburne, 19 miles, 85 cents; to group 6, another 100 miles south to Temple, $1.09; and to group 7, embracing the remainder of the state, south to and including San Angelo and Galveston, $1.33. There is no group 2 on the Santa Fe, but on other lines this group is in the extreme northern part of the state. Group 7 is not of the importance of the other groups to Oklahoma jobbers, whose principal trade in Texas is covered within some 200 miles. There are no group rates to the panhandle, which thus presents different conditions, and there is no specific basis on which commodity rates are constructed in either direction between Oklahoma and Texas.

Complainants insist that these Texas groups are impracticable for such short distances, and that if groups are to be retained Oklahoma should be also divided into groups. They also contend that by reason of this grouping in connection with the standard rates the Texas jobbers doubly profit on the first four classes northbound, because the latter, in addition to being made on the lower or jobbers' scale, have the additional advantage of construction on a mileage basis between particular points. The testimony of defendants' principal witness is interesting here in its reference to this grouping as well as in its general bearing on the southbound rates, and is substantially as follows:

The jobbers' rates on the first four classes southbound were canceled (1) because of the carriers' belief (not now so prevalent with the lower steamship rates from the Atlantic seaboard to Galveston) that Oklahoma jobbers owned their goods cheaper than Texas jobbers; and (2) the carriers desire to place Texas jobbers into Oklahoma on the same basis as Oklahoma jobbers in their own state, and to accord to Oklahoma jobbers into Texas the same rates that Texas jobbers pay in Texas, following the then practice in effect between Oklahoma and Kansas. This theory was substantially followed on traffic from Texas to Oklahoma, the rates applied on that traffic having been substantially the same as the Oklahoma scale then in effect. In working out this theory from Oklahoma to Texas, however, there was a miscarriage of purpose on the part of the carriers, due to a rather peculiar relation, or, in the language of this witness, "abnormality" in the Texas scale, which, paid by Texas jobbers intrastate, was to constitute the basis from Oklahoma into that state. This so-called abnormality was the unusually narrow spread between the first and fourth

east of Powers, and Dallas 30 miles east of Fort Worth, each point of origin therefore representing a short haul west, thence north and south, respectively.

Exhibit 5 is a comparison of rates from Dallas, on the Rock Island, to Oklahoma stations on the Kansas City, Mexico & Orient, with rates from Oklahoma City, which is situated on the Rock Island east of its junction with the Kansas City, Mexico & Orient, at Clinton, Okla., to Kansas City, Mexico & Orient stations in Texas on the Clinton main line south, intermediate to San Angelo. The haul from Dallas is north and west to a connection with the Kansas City, Mexico & Orient south of Clinton, Okla., and from Oklahoma City the haul is directly west to Clinton and south on the Kansas City, Mexico & Orient.

Exhibit 6 uses Dallas and Anadarko as originating points for a three-line haul in each case.

Exhibit 7 compares main-line rates of the Missouri, Kansas & Texas from Fort Worth and McAlester and from Sherman, Tex., and Durant, Okla., respectively, to branch-line stations on that carrier's rails. Sherman is 19 miles south of the Red River and Durant 15 miles north.

Following is a tabulated result of these briefly described comparisons, the average distances and rates, as stated, to the seven points of destination in the other state being shown:

From—	Average distance.	Average, first class.	Average, fourth class.
Exhibit 2.	*Miles.*		
Dallas	290	$0.71	$0.44
Guthrie		1.08	.73
Gainesville	73	.35	.21
Ardmore		.66	.44
Exhibit 3.			
Dallas	160	.77	.53
Ada		.92	.62
Exhibit 4.			
Fort Worth	197	.64	.39
Dallas			
Oklahoma City	197	85	.56
Exhibit 5.			
Dallas	300	.83	.51
Oklahoma City		1.07	.89
Exhibit 6.			
Dallas	242	.84	.53
Anadarko		1.17	.88
Exhibit 7.			
Fort Worth	237	.72	.44
McAlester		.97	.65
Sherman	100	.40	.24
Durant		.64	.43

This intervener shows that to Amarillo, Tex., in the panhandle, the rates from Oklahoma City are the same as from Wichita, Kans., Arkansas City, Ark., and Dallas, Tex., points of origin which are much farther removed, and that Kansas City and Texas jobbing points have lower rates on all classes for similar distances.

The Hale-Halsell Grocery Company, intervener, presents certain exhibits bearing upon its jobbing trade in north Texas, showing the disparity between the northbound and southbound rates between the two states. The following is a summary of certain of these exhibits, which compare the present rates south from Durant, Okla., to Texas points with the Oklahoma jobbers' scale in effect in the reverse direction and with the Texas commission scale for like distances:

	Class rates in cents per 100 pounds.
From Durant, Okla., to Denison, Tex. (19.5 miles)	[illegible]
Jobbers' scale	[illegible]
Texas scale	[illegible]
From Durant, Okla., to Ray, Tex. (22 miles)	[illegible]
Jobbers' scale	[illegible]
Texas scale	[illegible]
From Durant, Okla., to Sulphur Springs, Tex. (103 miles)	[illegible]
Jobbers' scale	[illegible]
Texas scale	[illegible]

Complainants request that commodity rates be established on harness, saddlery, flour, furniture, bar iron, agricultural implements, mineral water, excelsior, and macaroni; and that the minimum charge of 50 cents from Oklahoma into Texas be made to correspond with the minimum charge of 25 cents from Texas into Oklahoma. A revision of the cement rates from Oklahoma to Texas is requested, but as the rates from Ada to Texas destinations are in issue in another proceeding now before the Commission, *Oklahoma Portland Cement Co.* v. *M., K. & T. Ry. Co.*, no finding will be made with reference thereto. It is our understanding that there are but two cement-producing points in Oklahoma, at Ada and Dewey, respectively, and in the disposition of the case referred to due consideration will be given to the present testimony in fixing the proper relation between these producing points.

The record thus clearly establishes that Oklahoma jobbers labor under a serious disadvantage in rates on the first four classes into Texas, compared with the rates which Texas jobbers pay into Oklahoma, a disadvantage, in fact, which the principal defendant, the Rock Island, claims no differentiating transportation conditions between northbound and southbound traffic between the two states to

support; and this carrier expresses its willingness to apply the same rates in either direction if a satisfactory scale can be worked out. The only real point in controversy, therefore, is the general level of the rates to be applied between the two states. Three scales of rates have been proposed, one by the original complainant, another by the Oklahoma Traffic Association, and a third by the traffic manager of the Rock Island.

The original complainant's proposed scale is a reproduction of the first four classes of the Oklahoma uniform jobbers' scale, which now applies from Texas into Oklahoma, up to 350 miles, with an extension to 500 miles, the other six classes being based upon relative percentages existing in class rates prescribed by the Commission in cases involving, respectively, rates from California to Utah, from Buffalo-Pittsburgh to Arizona, and from Chicago to Utah common points, 19 I. C. C., 259, 237, 219, respectively. Complainant does not contend that the Commission fixed these rates on the basis of percentages, but insists that inasmuch as the proposed scale corresponds closely in percentage relation with these class rates in intermountain territory, it is at least reasonably low. The principal gradation difference between the present standard scale southbound and the rates proposed is that the former scale increases 4 cents for each 40 miles beyond 350, whereas complainant adds 1 cent for certain distances.

The Oklahoma Traffic Association suggests practically the first-class rate of the Oklahoma jobbers' scale up to 300 miles, with a slight reduction beyond, the other classes to base upon percentages, the scale differing in this respect from complainant's proposed scale in that instead of selecting rates in intermountain territory for comparative purposes, certain southwestern class rates are used, namely, from Kansas City and St. Louis to representative points in the states of Oklahoma, Kansas, Arkansas, and Texas.

Both of these proposed scales are for one-line haul, arbitraries being suggested for two or more line hauls. The Oklahoma Traffic Association suggests the arbitraries of the Texas commission and complainant certain arbitraries of the Oklahoma commission.

The scale proposed by the Rock Island is based upon the same "abnormality" of the Texas scale as are the present rates, in that it is practically a reproduction of the Texas commission's fourth-class rate, which, as stated, is unusually narrow in its spread from first class, for distances up to 200 miles. An advance of 3 cents is made for each additional 20 miles up to 300 miles. The other classes are determined by dividing complainant's proposed percentages first above mentioned into the fourth-class rate. It is said the fourth-class rate is selected as a basis here as it was in fixing the basis southbound, because it is the most important less-than-

carload class. This proposed scale is likewise for one-line application, the Rock Island not favoring joint rates lower than the sum of the locals, although this carrier is agreeable that the Texas group rates shall apply as maxima. The scale covers only the first four classes, which, it is contended, move the great bulk of the jobbers' traffic. It is said to be higher than the jobbers' scale, because of the comparative density of tonnage between Oklahoma and Texas and because of the effect of alleged probable reductions upon the Texas rates which would also be reflected in the eastern seaboard adjustment through Texas ports. The Gulf, Colorado & Santa Fe further fears a protest from the Texas jobbers and a reflection of any reductions from the Atlantic seaboard to Texas in the rates from St. Louis and Chicago to the same territory.

There is further suggested in the brief filed by the Oklahoma Traffic Association a composite scale consisting of certain features of each of those submitted by complainants at the hearing, in which the first-class rates are the same as those proposed by this intervener at the hearing, the other classes to be based on the following percentages:

Classes	1	2	3	4	5	A	B	C	D	E
Percentages	100	84	69	58	45	48	42	36	31	26

Two of the above percentages, B and E, are those proposed by complainant, and three, 4, 5, and A, are the percentages in this intervener's original proposed scale. These percentages are compared with the average percentage relation of the class rates used by the Oklahoma Traffic Association in southwestern territory in arriving at its scale and with the Commission's decisions hereby referred to with the following results:

Commission's decisions:

Classes	1	2	3	4	5	A	B	C	D	E
Percentages	100	85	72	59	49	50	40	31	29	25

Average of southwestern percentages:

Percentages	100	83	69	57	45	46	39	33	27	21

Proposed in intervener's brief:

Percentages	100	84	69	58	45	48	42	36	31	26

Following is a table of comparisons for certain distances up to 300 miles of the different scales, existing and proposed, with the present rates for similar distances from Oklahoma to Texas destinations, together with averages, all being shown in cents per 100 pounds:

For [illegible]
[illegible]
[illegible]
Complainant proposed.
Rock Island proposed.
Proposed in brief.
Present (Durant to Pott

			4	5	A	B	C	D	E
[illegible]	[illegible]	[illegible]	[illegible]	18	19	16	13	11	8
[illegible]	[illegible]	[illegible]	[illegible]	14	15	12	10	9	8
[illegible]	[illegible]	[illegible]	[illegible]	13	14	12	11	9	8
[illegible]	[illegible]	[illegible]	[illegible]	19	20	17	15	12	19
[illegible]	[illegible]	[illegible]	[illegible]	21	22	19	16	13	10
[illegible]	[illegible]	[illegible]	[illegible]	17	18	14	12	11	9
[illegible]	[illegible]	[illegible]	[illegible]	16.5	16.5	15	13	11	9
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	31	26	23	18	15
[illegible]	[illegible]	[illegible]	24						
[illegible]	[illegible]	[illegible]	[illegible]	24	25	22	19	15	12
[illegible]	[illegible]	[illegible]	[illegible]	22	22	16	14	12	10
[illegible]	[illegible]	[illegible]	[illegible]	18.5	19.5	17	15	13	11
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	31	26	23	18	15
[illegible]	[illegible]	24	[illegible]						
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	30	27	24	18	15
[illegible]	[illegible]	[illegible]	[illegible]	24	27	21	17	14	12
[illegible]	[illegible]	[illegible]	[illegible]	22	23	21	18.5	16	13.5
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	32	28	23	18
[illegible]	[illegible]	[illegible]	[illegible]						
[illegible]	[illegible]	[illegible]	49	34	35	32	28	20	16
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	35	26	22	17	15
[illegible]	[illegible]	[illegible]	[illegible]						
[illegible]	[illegible]	[illegible]	34	[illegible]	28	25	22	19	16
[illegible]	[illegible]	[illegible]	[illegible]	43	44	35	30	24	19
[illegible]	[illegible]	[illegible]	[illegible]						
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	40	37	31	22	17
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	37	30	26	21	18
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	32	28	25	21	18
[illegible]	[illegible]	[illegible]	[illegible]	44	45	36	31	25	19
[illegible]	[illegible]	[illegible]	43						
[illegible]	[illegible]	[illegible]	[illegible]	43	44	40	34	23	17
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	41	34	28	23	19
[illegible]	[illegible]	[illegible]	[illegible]	32	34.5	31.5	28	24	20
[illegible]	[illegible]	[illegible]	[illegible]	44	45	36	31	25	19
[illegible]	[illegible]	[illegible]	47						
[illegible]	[illegible]	[illegible]	[illegible]	44	46	40	34	23	17
[illegible]	[illegible]	[illegible]	47	41	44	36	38	25	[illegible]
[illegible]	[illegible]	73	[illegible]						
[illegible]	[illegible]	[illegible]	47.5	36	38.5	34	30	26	22
[illegible]	[illegible]	[illegible]	[illegible]	58	61	49	40	32	26
For [illegible]	[illegible]	[illegible]	51						
[illegible]	[illegible]	[illegible]	[illegible]	44	46	40	34	23	17
[illegible]	[illegible]	[illegible]	[illegible]	43	46	38	32	26	21
[illegible]	[illegible]	[illegible]	71						
[illegible]	[illegible]	[illegible]	[illegible]	38	40.5	36	31	27	23
[illegible]	[illegible]	[illegible]	75	[illegible]	61	49	40	32	26
Aver[illegible]									
[illegible]	[illegible]	[illegible]	31.7						
Tex[illegible]	[illegible]	[illegible]	41.4	28.8	32	28.4	24.2	17.5	13.5
[illegible]	[illegible]	[illegible]	31.7	27.2	29.7	23.7	19.9	16.5	13.8
[illegible]	[illegible]	[illegible]	44.1						
[illegible]	[illegible]	[illegible]	[illegible]	24	25.7	22.9	20.2	17.3	14.6
Present ra[illegible]	[illegible]	[illegible]	[illegible]	38.3	39.7	32.3	27.6	22	17.7

Since this complaint was instituted defendants have filed supplement 13 to the tariff in issue, making certain changes in rates by the Texas one-line scale up to 245 miles and grading up to

300 miles. Complainants allege that should the scale proposed by the Rock Island be adopted it would increase the rates on the first three classes above those now effective in this supplement, which in turn are much higher than the rates which complainants ask to have established.

Considering all of the facts of record, we find that the class and commodity rates from Oklahoma into Texas, as shown in Leland's southwestern lines tariff, series No. 26, I. C. C. No. 831, and supplements, are unreasonable and unjustly discriminatory. The remaining question is the extent of this discrimination.

The so-called Oklahoma uniform jobbers' scale appears to have originated in Kansas and later to have been extended to traffic between Oklahoma and Kansas, Oklahoma and Arkansas, Texas into Oklahoma, and, as stated, for a short time from Oklahoma into Texas. No convincing reason has been advanced for withdrawal of these rates from Oklahoma into Texas, and no evidence has been submitted that they were unremunerative to the carriers. Neither does the present record warrant the Commission in sanctioning the correction of the general rate adjustment between Oklahoma and Texas by an increase alone in the northbound rates on the first four classes, as defendants suggest. We feel, however, inasmuch as a revision is asked on all the classes on basis of the jobbers' scale effective on the first four classes northbound, with changes in the other classes to preserve their proper relation thereto and with corresponding reductions on all classes beyond its present mileage, that the resulting adjustment would be somewhat low for application between these states. We are not disposed to decrease the revenues of the carriers on this traffic, nor, on the other hand, to sanction any material advance in that revenue, but rather to establish a scale for application between the states which will yield substantially the same return as the present rates. This necessarily means some increase in the northbound rates on the first four classes and such decrease on the remaining classes northbound and on all classes southbound as will preserve the necessary balance.

In working out a satisfactory and just scale, there doubtless are many facts within the knowledge and experience of the respective parties to this complaint bearing upon local conditions and requirements in this general territory, which are not a part of the present record, but the knowledge of which, the general basis or level of the future rates once determined by the Commission, would be of aid in an expeditious handling of the matters presented. This observation is particularly pertinent to the commodity-rate adjustment, which must be dealt with according to the transportation conditions between specific points, and to the panhandle, where different conditions prevail from the conditions obtaining in the remainder of the state of

Texas. Differential territory must be lined up and suitable arbitraries established for hauls over more than one line. We have therefore thought it proper and expedient to extend the opportunity to the respective parties to submit, after conference with each other, a proposed basis in accordance with the views herein expressed to the Commission for its consideration. We are also prompted somewhat to this course by a suggestion of one of the parties complainant, that with fifth class and class A on a proper basis, many commodity rates can perhaps be dispensed with.

It is our view that a mileage scale should be used up to 300 miles and that grouping beyond that distance, if thought advisable by the parties, should comprehend groups in Oklahoma as well as in Texas.

We shall leave the case open until October 1, 1912, at the expiration of which period we shall further proceed with a view to making a definite order.

No. 3446.

MEDFORD TRAFFIC BUREAU

v.

SOUTHERN PACIFIC COMPANY.

Submitted January 25, 1911. Decided June 3, 1912.

Defendant's present class rates for the transportation of traffic in classes 1 to 4, inclusive, from Medford, Oreg., to certain designated stations in California, found to be unreasonable, and lower maximum rates prescribed for the future.

W. H. McCune for complainant.

P. F. Dunne, *W. D. Fenton*, and *F. C. Dillard* for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner:*

Complainant assails as excessive, unjust, unreasonable, and discriminatory the class rates, classes 1 to 4, inclusive, applied by the defendant to traffic moving from Medford, Oreg., to certain designated stations in California.

Medford is located on the main line of the Southern Pacific, 329 miles south of Portland, Oreg., and 353 miles north of Sacramento, Cal. It is a city of about 9,000 population, and is situated in a section of country devoted largely to fruit growing, live-stock raising, and mining. In recent years it has sought to become a jobbing center, especially for the California points here in question.

The rates specifically attacked by complainant are stated in the following table:

From Medford, Oreg., to—	Distance.	Class rates per 100 pounds.			
		1	2	3	4
	Miles.	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Hornbrook, Cal.	47	40	35	32	27
Klamathon, Cal.	51	41	36	32	28
Ager, Cal.	56	44	39	35	30
Montague, Cal.	66	49	44	40	35
Gazelle, Cal.	81	56	50	45	39
Edgewood, Cal.	88	60	53	48	42
Weed, Cal.	93	63	56	50	43
Sisson, Cal.	103	65	59	53	46
Dunsmuir, Cal.	120	75	66	60	51

The rates named are combinations of local rates to and from the boundary line between the state of Oregon and the state of California, used as a basing point. In other words, the rates are made up of rates from Medford to the state line and rates from the state line to the destination points.

From Medford to the state line the class rates from first to fourth, inclusive, are, in cents per 100 pounds, as follows:

Class	1	2	3	4
Rate	32	28	25	21

From the state line to the points in question the rates, with the distances approximately stated, are as follows:

From the state line to—	Distance.	Class rates per 100 pounds. 1	2	3	4
	Miles.	Cents.	Cents.	Cents.	Cents.
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible], Cal	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible], Cal	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible], Cal	[illegible]	45	38	34	33

Rates from Medford are asked for as shown in the following table:

From Medford, Oreg., to—	Distance.	Class rates per 100 pounds. 1	2	3	4
	Miles.	Cents.	Cents.	Cents.	Cents.
[illegible]brook, Cal	47	28	24	20	17
[illegible], Cal	51	30	25	21	18
[illegible], Cal	56	32	27	22	19
[illegible], Cal	66	36	30	25	21
[illegible], Cal	81	41	35	29	25
[illegible], Cal	88	42	36	29	25
[illegible], Cal	93	43	37	30	26
[illegible]	105	45	38	32	27
[illegible], Cal	120	48	41	34	29

For purposes of comparison complainant refers to rates applied by defendant south from Portland, Oreg., and north from Sacra-

mento, Cal., to points on its main line of approximately the same distances as the points in question from Medford, as follows:

From Portland to points south.					From Sacramento to points north.				
Distance.	Class rates per 100 pounds.				Distance.	Class rates per 100 pounds.			
	1	2	3	4		1	2	3	4
Miles.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Miles.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
48	24	21	18	16	47	21	19	17	15
51	24	21	18	16	52	21	19	17	15
58	26	24	21	20	63	22	20	18	16
67	28	25	22	20	69	22	20	18	16
80	28	25	22	20	78	26	25	21½	20½
86	29	27	24	23	89	31	29	24½	22½
92	32	29	26	25	96	34	32	27½	25½
106	40	37	33	30	105	40	37	32½	29½
118	45	41	38	34	118	45	40	34½	31½

Defendant's rates in the state of Oregon are on a higher basis than the rates for substantially the same distances in the state of California. From Ashland, Oreg., to the Oregon-California line, a distance of 25 miles, the class rates, first to fourth, are 27, 24, 20, and 17 cents per 100 pounds, whereas from the Oregon-California line to Montague, Cal., a distance of 28 miles, the class rates, first to fourth, are 17, 16, 15, and 14 cents per 100 pounds. From Medford to the state line, a distance of 38 miles, the class rates, first to fourth, are 32, 28, 25, and 21 cents per 100 pounds, whereas from the state line to Gazelle, Cal., a distance of 43 miles, the class rates, first to fourth, are 24, 22, 20, and 18 cents per 100 pounds. Other illustrations of similar character are shown.

Defendant contends that the rates referred to from Portland and Sacramento to points on its main line are controlled by water competition and are therefore unduly low. In view thereof, and for purposes of further comparison, complainant refers to rates applied by defendant between other points on its lines for approximately similar distances as the points from Portland and Sacramento, apparently not influenced by water competition. The following are examples: From Suisun, Cal., to Calistoga, Cal., a distance of 47 miles, the class rates, first to fourth, are 25, 18, 15, and 13 cents per 100 pounds; from Napa Junction, Cal., to Santa Rosa, Cal., a distance of 37 miles, the class rates, first to fourth, are 25, 18, 15, and

13 cents per 100 pounds. Other illustrations of a similar character are also referred to in this connection.

From—	To—	Distance.	Class rates per 100 pounds.			
			1	2	3	4
		Miles.	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Stockton, Cal	Salinas, Cal	198	48	44	35	[illegible]
San Jose, Cal	Arbuckle Cal	179	48	42	39	[illegible]
Lathrop Cal.	Orville Cal	135	42	38	35	[illegible]
Stockton, Cal	.....do	126	42	38	25	[illegible]
San Francisco, Cal	Salinas, Cal	118	34	32	29	[illegible]
Fresno Cal	Lathrop Cal	113	46	44	41	[illegible]

Further comparisons are made of certain of the rates complained of and of those asked for, with rates out of Spokane, Wash., and Boise, Idaho, via the Great Northern, the Northern Pacific, the Oregon Railroad & Navigation, and Oregon Short Line railways, as shown in the following table:

Rates—	Distance.	Class rates per 100 pounds.				Spokane rates: Distance.	Spokane rates: Class rates per 100 pounds.			
		1	2	3	4		1	2	3	4
	Miles.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Miles.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
						GREAT NORTHERN.				
Complained of	47	40	35	32	27	51	25	22	20	15
Asked for	47	28	24	20	17	46	25	22	20	15
						NORTHERN PACIFIC.				
						50	25	22	20	15
						60	25	22	20	15
						OREGON RAILROAD & NAVIGATION.				
Complained of	81	56	50	45	39					
Asked for	81	41	35	29	25	70	25	22	20	15
						OREGON SHORT LINE.				
						79	38	32	27	[illegible]

From Portland, Oreg., to Sacramento and San Francisco the class rates, first to fourth, inclusive, in cents per 100 pounds are as follows:

To Sacramento—				
Class	1	2	3	4
Rate	60	47½	45	42½
To San Francisco—				
Class	1	2	3	4
Rate	51	41	41	41

The rates complained of from Medford to most of the points in question, for the short distance to which they apply, are considerably greater than the rates applicable to the same classes for the very much longer distances from Portland to Sacramento and San Francisco.

From Portland to the California points here in question the class rates, first to fourth, in cents per 100 pounds are shown in the following table:

From Portland, Oreg., to—	Distance.	Class rates per 100 pounds.			
		1	2	3	4
	Miles.	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Hornbrook, Cal.	376	141	122	114	103
Klamathon, Cal.	380	142	123	114	104
Ager, Cal.	385	145	126	117	106
Montague, Cal.	395	150	131	122	111
Gazelle, Cal.	410	157	137	127	115
Edgewood, Cal.	417	161	140	130	118
Weed, Cal.	422	164	143	132	119
Sisson, Cal.	434	164	142½	130	120
Dunsmuir, Cal.	449	159	137½	126	116

Reference is made to class rates, first to fourth, inclusive, established by the railroad commissions of the states of Illinois, Iowa, and Minnesota.

ILLINOIS.

Distance, miles.	Class rates per 100 pounds.			
	1	2	3	4
	Cents.	*Cents.*	*Cents.*	*Cents.*
50	23.3	18.8	15.8	11.3
60	24.8	20.3	17.3	12
80	27.8	23.3	19	13.5
100	30.8	24.8	19.9	15
120	33.8	26.3	20.8	16.2

IOWA.

50	20	17	12.3	10
60	20.8	17.7	12.9	10.4
80	22.4	19	14.9	11.2
100	24	20.4	16	12
120	27.2	22.4	17.4	13.3

MINNESOTA.

50	20.82	17.35	10.41	8.33
60	22.78	18.98	15.19	11.39
80	26.70	22.25	17.80	13.35
100	30.62	25.52	20.41	15.31
120	34.54	28.78	23.02	17.27

It is contended that defendant's rate adjustment for traffic crossing the Oregon-California line is abnormal and unreasonable in that the

state line is used as a basing point. It is insisted that the rates should be adjusted to a scale of through mileage without regard to the state line at which there is no trade center or even a station. In other words, it is objected that the rate structure involves two scales of rates, one on each side of the state line, which widely differ in the rates applied for substantially the same distances. For instance, on the California side the first graduation for a distance of 5 miles is 5 cents per 100 pounds, first class, and on the Oregon side the first graduation for a distance of 5 miles is 14 cents per 100 pounds, first class. It is claimed that the transportation conditions are practically the same on both sides of the line, or that they are, at most, not sufficiently different to justify the difference in the rates. For comparison, in this respect, reference is made to state line situations on the Southern Pacific lines and on other railways, all of which tend to support the complainant's contention that state lines do not in themselves furnish any reasonable excuse for their use as basing points, with which contention we agree.

We are also given the benefit of a large amount of other data respecting the capitalization scheme of the defendant company, comparison of earnings and expenses of the defendant with those of other roads, tables of ton-mile earnings, and the estimated cost of reproduction of the lines of the Southern Pacific in Oregon.

The rates complained of are defended chiefly on the ground of the heavy grades and sharp curves incident to that part of defendant's line between Medford and Dunsmuir. Medford is located at an elevation of about 1,400 feet, approximately 30 miles north of the highest point of the Siskiyou Mountains. South of Medford defendant's railway rises at a heavy grade to the summit of the mountains, an elevation of 4,135 feet. From Ashland, a point 12 miles south of Medford, to the highest point of the mountains the grade is exceedingly heavy, the maximum being, as before stated, 174.24 feet to the mile, or 3.3 per cent. Helper engines are required for heavily loaded freight trains in order to overcome this grade.

A witness for the defendant testified that the cost of maintenance and transportation as to any particular portion of the company's line is not charged against any specific traffic, with respect to its character or point of origin or destination, but is represented in the general cost of moving all traffic. Heavy grades are encountered in moving northbound traffic over the mountains, as well as traffic southbound. There is, indeed, no material difference in this respect as between like distances on either side of the mountains; yet from Zuleka, Cal., to the state line, a distance of 8 miles of ascending grade, the rates, first to fourth classes, are 6, 6, 6, and 5 cents per 100 pounds, while from the state line to Siskiyou, a distance of 8 miles of the same

degree of ascending grade, the rates, first to fourth classes, are 16, 14, 11, and 10 cents per 100 pounds. Other illustrations are given, all of which are opposed to defendant's theory that the steepness of grade controls the rates complained of. It is well to observe in this connection also the fact that three-fourths of the tonnage that crosses these mountains is through traffic, which moves under much lower rates than the rates here in question.

After full hearing and consideration we find the rates existing over defendant's line from Medford to the points of destination named to be unreasonable, and an order will be issued directing the defendant to file and publish rates, not exceeding the following, on the four classes specified:

From Medford, Oreg., to—	Class rates per 100 pounds.			
	1	2	3	4
	Cents.	*Cents.*	*Cents.*	*Cents.*
Hornbrook, Cal	28	23	21	17
Klamathon, Cal	30	25	23	18
Ager, Cal	32	27	24	19
Montague, Cal	37	31	28	22
Gazelle, Cal	43	36	32	26
Edgewood, Cal	46	38	35	28
Weed, Cal	48	40	36	29
Sisson, Cal	53	44	38	32
Dunsmuir, Cal	59	49	44	35

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

1380. Elk Coal Company *v.* Coal & Coke Railway Company. Car distribution at complainant's mines in Turner and Queen Shoals, W. Va. *John W. Hallihan* for complainant. *Geo. E. Price* and *Buckner Clay* for defendant. March 18, 1912. Dismissed for want of prosecution.

2985. Sunderland Bros. Company *v.* Atlantic Northern & Southern Railway Company et al. Rates on sand from pits located along the Platte River in Nebraska to Elkhorn and Kimballton, Iowa. *C. E. Childe* for complainant. *M. L. Bell*, *Edson Rich*, and *James E. Kelby* for defendants. April 5, 1912. Transferred to Special Reparation Docket for adjustment.

3161. In the Matter of Warehousing at Baltimore, Md. Free storage granted to Union Sulphur Co. and Clarence H. Cottam without tariff provision by the B. & O. R. R. Co. *Wm. A. Parker* for B. & O. R. R. Co. March 18, 1912. Order vacated and set aside.

3849. Robinson Clay Product Company *v.* Pennsylvania Company et al. Rates on fire brick from Parral, Ohio, to Midland and Wingham, Ont., Canada. *Alvin Hill* for complainant. *Squire, Sanders & Dempsey*, *Ira W. Gantt*, *S. H. Tolles*, and *Chas. M. Buss* for defendants. April 1, 1912. Dismissed on motion of complainant.

3875. Carstensen & Anson *v.* Pennsylvania Railroad Company et al. Merchandise rates from Atlantic seaboard points to Salt Lake City, Utah. *S. Crawford Ross* and *Collitt & Hutchinson* for complainant. *N. H. Loomis*, *F. C. Dillard*, *P. L. Williams*, *H. A. Taylor*, *T. H. Burgess*, *Henry Wolf Bikle*, *Geo. Stuart Patterson*, *Wm. Ellis*, *O. E. Butterfield*, *Clyde Brown*, *C. C. Wright*, *E. M. Hyser*, *Chas. Heebner*, *Edw. D. Robbins*, *Wm. C. Coleman*, *A. P. Humburg*, *John H. Clark*, *Robt. Dunlap*, *T. J. Norton*, *R. B. Scott*, *E. N. Clarke*, *A. C. Campbell*, and *John B. Kerr* for defendants. December 1, 1911. Refund to be made in accordance with report and order in Nos. 3660 and 3661 and report thereof made to the Commission.

4036. Star Mill & Elevator Company *v.* Missouri, Kansas & Texas Railway Company et al. Rates on bulk corn from Broken Arrow, Okla., to Amarillo, Tex. *D. D. Dewing* for complainant. *W. F. Dickinson* and *Wallace T. Hughes* for defendants. May 7, 1912. Dismissed on motion of complainant.

4115. Galligher Machinery Company et al. v. Denver & Rio Grande Railroad Company et al. Merchandise rates from eastern points to Salt Lake City, Utah, and Portland and Victor, Colo. *G. M. Stephen* for complainant. *E. N. Clarke* by *L. T. Wilcox*, *W. F. Dickinson*, *W. T. Hughes*, *R. B. Scott*, *G. H. Crosby*, *D. L. Meyers*, *A. P. Humburg*, *F. C. Dillard*, *H. C. Scandrett*, *C. C. Wright*, and *James Stillwell* for defendants. December 1, 1911. Refund to be made in accordance with report and order in Nos. 3660 and 3661 and report thereof made to the Commission.

4118. Gleason Mercantile Company et al. v. Chicago, Burlington & Quincy Railroad Company. Merchandise rates from Atlantic seaboard points to Cheyenne, Wyo. April 1, 1912. Dismissed for want of prosecution.

4155. Louisville Coal & Coke Company et al. v. Norfolk & Western Railway Company et al. Rates on coal from Pocahontas, Tug River and Thacker districts, W. Va., to Toledo and Sandusky, Ohio, when for use in bunkers on lake vessels. *Wm. A. Glasgow, jr.*, for complainants. *R. Walton Moore*, *H. Q. Wasson*, and *A. P. Burgwin* for defendants. April 5, 1912. Dismissed on motion of complainant.

4166. Abingdon Mills v. Southern Railway Company et al. Rates on cotton duck from Huntsville, Ala., to Spokane, Wash. *M. P. Callaway* for S. Ry. Co. and M. & O. R. R. Co. April 8, 1912. Dismissed for want of prosecution.

4186. Portland Chamber of Commerce v. Oregon Short Line Railroad Company. Class and commodity rates from Huntington, Oreg., to stations east and west thereof on defendant line. *Teale, Minor & Winifree* for complainant. *F. C. Dillard* and *P. L. Williams* for defendant. April 1, 1912. Dismissed on motion of complainant.

4253. I. H. Kent Company v. Southern Pacific Company. Rates on comb honey from Fallon, Nev., to San Francisco, Cal. *W. P. Seeds* for complainant. *H. A. Scandrett* and *C. W. Durbrow* for defendant. March 22, 1912. Transferred to Special Reparation Docket for adjustment.

4276. Windsor Milling & Elevator Company v. Colorado & Southern Railway Company et al. Rates on flour from Windsor, Colo., to Globe, Ariz. *James E. O'Connor* for complainant. April 4, 1912. Transferred to Special Reparation Docket for adjustment.

4396. Page & Son, inc., v. Southern Pacific Company. Refrigeration charge on shipment of oranges from Pomona, Cal., to Portland, Oreg. *Kenneth L. Fenton* for defendant. May 13, 1912. Dismissed for want of prosecution.

4404. H. L. Edwards & Company v. Chicago, Rock Island & Pacific Railway Company et al. Cotton from Stuart, Okla., to

Galveston, Tex., compressed at Shawnee, Okla. *M. J. Dowlin* and *W. F. Dickinson* for defendants. April 1, 1912. Dismissed for want of prosecution.

4409. BUTLER BROS. *v.* CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL. Rates on woodenware to Jersey City, N. J., from Minneapolis, Minn. *Chas. E. Bryant* for complainant. May 7, 1912. Dismissed. Straight overcharge of $50.70 refunded.

4445. GAGER LIME & MANUFACTURING COMPANY *v.* NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL. Rates on ground limestone from Sherwood, Tenn., to Rogers, S. C., and Buford, Ga. *Arthur B. Hayes* for complainant. *R. Walton Moore* for defendants. April 1, 1912. Dismissed on motion of complainant.

4466. ANACONDA COPPER MINING COMPANY *v.* LEHIGH VALLEY RAILROAD COMPANY ET AL. Misrouting shipment of horseshoes from Catasauqua, Pa., to Joliet, Ill. *J. E. Ingram* for complainant. *D. P. Connell* for M. C. R. R. Co. May 13, 1912. Misrouting admitted. Overcharge of $106.11 refunded.

4544. CRANE & MACMAHON, INC., *v.* TOLEDO & OHIO CENTRAL RAILWAY COMPANY ET AL. Rates on bent felloes in the rough from St. Marys, Ohio, to Dubuque, Iowa. *D. P. Connell* for defendants. April 1, 1912. Dismissed for want of prosecution.

4545. VIRGINIA-CAROLINA CHEMICAL COMPANY *v.* LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL. Rates on phosphate rock from Mt. Pleasant, Tenn., district and Gordansburg, Tenn., to Staunton, Va. *H. W. B. Glover* for complainant. *J. E. Crosland* for defendants. May 7, 1912. Dismissed. Complainant satisfied by Fourth Section Order No. 971.

4554. NATIONAL COAL COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY. Distribution of cars for coal at complainant's mine in Guernesey Co., Ohio. March 18, 1912. Dismissed for want of prosecution.

4560. RIVERSIDE MILLS *v.* SOUTHERN RAILWAY COMPANY. Rates on cotton linters from Meridian, Miss., to Augusta, Ga. *R. J. Southall* for complainant. *C. B. Northrop* for defendant. April 15, 1912. Transferred to Special Reparation Docket for adjustment.

4623. WINTER'S METALLIC PAINT COMPANY *v.* CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY. Refusal to furnish cars for the transportation of coal from Jackson Hill, Ind., to Iron Ridge, Wis. *Carle Whitehead* and *A. L. Vogl* for complainant. *Fred H. Wood* and *C. B. Cardy* for defendants. May 7, 1912. Dismissed motion of complainant.

4644. GAGER LIME & MANUFACTURING COMPANY *v.* NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL. Rates on lime from Sherwood, Tenn., to Burgaw, N. C. *Arthur B. Hayes* for complain-

[illegible] April [illegible]. Dismissed [illegible]

[illegible] Company v. Nashville [illegible] Rates on gravel [illegible] Dismissed on motion of com- [illegible]

[illegible] Company v. Southern Railway [illegible] Ala., to South [illegible] for de- [illegible] Dismissed on motion of complainant.

[illegible] Indianapolis & Louisville [illegible] from Cedar Creek, Ind. [illegible] complainant. [illegible] Dismissed on motion of complainant.

[illegible] Company v. Atchison, Topeka [illegible] shipment of [illegible] Tennessee and Mississippi. [illegible] Fred G. [illegible] Dismissed. Over- [illegible] be refunded.

REPARATION CASES DISPOSED OF BY THE COMMISSION IN FORMAL BUT UNREPORTED DECISIONS DURING THE TIME COVERED BY THIS VOLUME.

4111 (U. R. No. 551). REYNOLDS-DAVIS & COMPANY *v.* ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.—No. 4123. SAME *v.* FORT SMITH & WESTERN RAILROAD COMPANY ET AL.—Unreasonable rate on small-arms ammunition from Kings Mills, Ohio, to Fort Smith, Ark. *Ben D. Kimpel* for complainant. *Henry G. Herbel* and *J. J. Gibson* for defendants. March 11, 1912. Reparation awarded for (total) $43.52.

4321 (U. R. No. 552). ALBERT MILLER & COMPANY *v.* MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL.—Misinterpretation of tariff on potatoes from Lockport, La., to Fort Wayne, Ind. *J. E. Robinson* for complainant. *C. W. Owens*, *H. A. Scandrett*, *A. P. Humburg* and *James Stillwell* for defendants. March 21, 1912. Complaint dismissed.

2445 (U. R. No. 553). IDAHO LIME COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Unreasonable rate on cement plaster from Medicine Lodge, Kans., to Spokane, Wash. *D. E. Twitchell* for complainant. *John F. Reilly* for defendants. April 1, 1912. Reparation awarded for $228.80.

3855 (U. R. No. 554). FRANKE GRAIN COMPANY *v.* LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.—Alleged unreasonable rate on baled hay from Eaton Rapids, Mich., to Lac du Flambeau, Wis., via alternative route. *George A. Schroeder* for complainant. *C. C. Wright* for Chicago & North Western Railway Company. April 8, 1912. Complaint dismissed.

3962 (U. R. No. 555). VIRGINIA-CAROLINA CHEMICAL COMPANY *v.* SOUTHERN RAILWAY COMPANY ET AL.—Alleged unreasonable rate on acid phosphate from Charleston, S. C., to Shreveport, La. *H. W. B. Glover* for complainant. *C. B. Northrop* for defendants. April 1, 1912. Complaint dismissed.

3980 (U. R. No. 556). DE CAMP FUEL COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.—Unreasonable rate on coal from Rock Island, Ill., to Sioux City, Iowa. *Lewis & Rice* for complainant. *William Ellis* for defendant. April 8, 1912. Reparation awarded for $1,034.78.

[illegible] IRON WORKS v. ALABAMA GREAT [illegible] COMPANY ET AL.—Unreasonable rate on archi- [illegible] New Iberia, La. *Arthur* [illegible] *H. A. Scandrett* and [illegible] for defendants. April 1, 1912. Reparation [illegible]

[illegible] LUMBER COMPANY v. LOUISIANA & [illegible] COMPANY ET AL.—Unreasonable rate on yellow- [illegible] to Walthill, Nebr. *George McBlair* [illegible] *C. E. Perkins*, and *William Gray* for [illegible] Reparation awarded for \$22.56.

[illegible] GREAT WESTERN PORTLAND CEMENT COM- [illegible] KANSAS & TEXAS RAILWAY COMPANY ET AL.—Un- [illegible] from Mildred, Kans., to Okmulgee, Okla. [illegible] *W. Allen* for Missouri, Kansas & Texas Railway Company. April 8, 1912. Reparation awarded for [illegible]

[illegible] WALSH & WEIDNER BOILER COMPANY v. PHILADELPHIA & READING RAILWAY COMPANY ET AL.—Alleged un- reasonable rate on steel manheads from Pottstown, Pa., to Chatta- nooga, Tenn. [illegible] for complainant. *Charles J. Rixey*, [illegible] for defendants. April [illegible], 1912. Complaint dismissed.

[illegible] ELKHART BRISTOL BOARD & PAPER COM- PANY v. CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.—Alleged unreasonable rate on paper stock from Chicago, Ill., to Elkhart, Ind. *A. E. Decker* for complainant. *D. P.* [illegible] for defendants. April [illegible], 1912. Complaint dismissed.

[illegible] (U. R. No. [illegible]). RELIANCE MANUFACTURING COMPANY v. ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL.—Alleged un- reasonable charges for transportation of cotton piece goods from Meridian, Miss., to Michigan City, Ind. *E. C. Bogren* for com- plainant. *Frank W. Gwathmey* for defendants. April 8, 1912. Complaint dismissed.

4418 (U. R. No. 563). HUMPHREY SUPPLY COMPANY *v.* SOUTHERN PACIFIC COMPANY.—Alleged unreasonable rate on ground cork from San Francisco, Cal., to Reno, Nev. *William P. Seeds* for complain- ant. *H. A. Scandrett* and *C. W. Durbrow* for defendant. April 8, 1912. Complaint dismissed.

4427 (U. R. No. 564). ALASKA LUMBER COMPANY *v.* GREAT NORTH- ERN RAILWAY COMPANY.—Alleged unreasonable demurrage charges on one car of lumber from Gold Bar, Wash., to Edgemont, S. Dak., diverted to Sauk Centre, Minn., while stopped at Havre, Mont., on [illegible]plainant's order. *Walter Metzenbaum* for complainant. *F. G.* [illegible]*ety* for defendant. April 8, 1912. Complant dismissed.

[illegible]58 (U. R. No. 565). SHELBY COUNTY WASHED COAL COMPANY *v.* [illegible]AGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.—Un-

reasonable rate on coal from Wyoming, Ill., to Mason City, Iowa. *M. F. Gallagher* for complainant. *R. B. Scott* and *G. B. Winston* for defendants. April 8, 1912. Reparation awarded for $184.52.

4154 (U. R. No. 566). PETER SCHOENHOFEN BREWING COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.—Unreasonable rate on empty beer packages from Pittsburg, Kans., to Chicago, Ill. *Anton Zeman* for complainant. *William Ellis* for Chicago, Milwaukee & St. Paul Railway Company. April 1, 1912. Reparation awarded for $9.83.

3913 (U. R. No. 567). OHIO VALLEY TIE COMPANY *v.* LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY ET AL.—No. 4411. SAME *v.* LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY ET AL.—No. 4411 (Sub-No. 1). SAME *v.* LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.—No. 4411 (Sub-No. 2). SAME *v.* LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY ET AL.—No. 4411 (Sub-No. 3). BOND BROTHERS *v.* LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.—Unreasonable rates on ties from points in Kentucky, via Louisville, Ky., to points north of Ohio River. *Edward W. Hines* and *J. V. Norman* for complainants. *W. A. Northcutt*, *W. A. Colston*, *T. K. Helm*, *R. A. Miller*, and *Charles H. Gibson* for defendants. April 8, 1912. Reparation awarded for (total) $9,811.27.

3916 (U. R. No. 568). INTERNATIONAL CREOSOTING & CONSTRUCTION COMPANY *v.* NEW ORLEANS, TEXAS & MEXICO RAILROAD COMPANY ET AL.—Unreasonable rate on ties from Reaves and Le Blanc, La., to Texas City, Tex. *Arthur B. Hayes* for complainant. *Thos. P. Littlepage* for defendants. May 6, 1912. Reparation awarded for $210.49.

2638 (U. R. No. 569). E. A. HOWARD & COMPANY *v.* WISCONSIN CENTRAL RAILWAY COMPANY ET AL.—Unreasonable rate on hardwood lumber from Glidden, Wis., to San Francisco, Cal. *Cushing & Cushing* for complainant. *E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company. May 6, 1912. Reparation awarded for $156.11.

3476 (U. R. No. 570). GOODMAN MANUFACTURING COMPANY *v.* PENNSYLVANIA RAILROAD COMPANY ET AL.—Alleged unreasonable rate on steel locomotive tires from Burnham, Pa., to Chicago, Ill. *G. M. Stephen* for complainant. *Henry Wolf Biklé* and *D. P. Connell* for defendants. May 6, 1912. Complaint dismissed.

4010 (U. R. No. 571). CENTRAL COMMERCIAL COMPANY *v.* ILLINOIS CENTRAL RAILROAD COMPANY ET AL.—Alleged unreasonable rate on turpentine from Tylertown, Miss., to Chicago, Ill. *Collett & Hutchinson* for complainant. *A. P. Humburg* for Illinois Central Railroad Company. May 7, 1912. Complaint dismissed.

4191 (U. R. No. 572). KOCH BUTCHERS SUPPLY COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Unreasonable rates on wooden bungs from Chicago, Ill., to Kansas City,

[illegible] for complainant. *D. L. Meyers* and *R. B. Scott* [illegible] Reparation awarded for $18.77.

[illegible] FERTILIZER COMPANY v. LOUIS[illegible] RAILROAD COMPANY ET AL.—Unreasonable rate [illegible] Tenn., to Buffalo, N. Y. [illegible] complainant. *[illegible] M. [illegible]* for Louisville & [illegible] Company. May 7, 1912. Reparation awarded [illegible]

[illegible] H. F. MEYER v. SOUTHERN RAILWAY COM[illegible]—[illegible] canned goods from Penrose, N. C., to [illegible] for complainant. *Claudian B.* [illegible] for defendant. May 7, 1912. [illegible]

[illegible] COMSTOCK & COMPANY v. NEWARK & [illegible] COMPANY ET AL.—Unreasonable rate on canned [illegible] N. Y., to Birmingham, Ala. *John C. Hor*[illegible] for defendants. May 7, [illegible]

[illegible] MANUFACTURING COMPANY v. CHICAGO, [illegible] RAILWAY COMPANY ET AL.—Unrea[illegible] from Minneapolis, Minn., to Beloit, Wis. [illegible] Wright and *A. H. Lossow* for [illegible] Reparation awarded for $23.52.

[illegible] LUMBER COMPANY v. CHICAGO & [illegible] COMPANY ET AL.—Unreasonable rate on lumber from [illegible] Higginsville, Mo. *O. M. Rogers* for complain[illegible] *A. B.* [illegible] for defendants. May 7, 1912. [illegible]

[illegible] HAAS & SONS v. PENNSYLVANIA RAIL[illegible] COMPANY ET AL.—Unreasonable rate on printed cards from Phil[illegible], Pa., to San Francisco, Cal. *W. W. Brackett* for complain[illegible] and *C. W. Dorbrow* for defendants. May 7, [illegible] Complaint dismissed.

[illegible] CENTRAL COMMERCIAL COMPANY v. TALLASSEE & MONTGOMERY RAILWAY COMPANY ET AL.—Unreasonable rate on [illegible] from Tallassee, Ala., to Chicago, Ill. *Collett & Hutchinson* for complainant. [illegible] W. *Gwathmey* for defendants. May 7, 1912. Reparation awarded for $135.69.

3941 (U. R. No. 5801). B. D. ANGUISH v. CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY ET AL.—Alleged unreasonable rate on cabbage from South Hammond, Ind., to Elk River, Minn. *O. M. Rogers* for complainant. *C. C. Wright* for Chicago & North Western Railway Company. May 7, 1912. Complaint dismissed.

3973 (U. R. No. 5811). NORTHERN MERCANTILE COMPANY, LIMITED, v. NORTHERN PACIFIC RAILWAY COMPANY ET AL.—Unreasonable charges

on cedar fence posts from Thompson Spur, Idaho, to Fort Collins, Colo. *L. D. McFarland* for complainant. *E. J. Cannon* for Northern Pacific Railway Company. May 7, 1912. Reparation awarded for $64.35.

3974 (U. R. No. 582). WISCONSIN BRIDGE & IRON COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.—Alleged unreasonable rate on structural iron from North Milwaukee, Wis., to Chicago, Ill. *Emil L. Fuhrmann* for complainant. *William Ellis* and *F. G. Wright* for defendant. *C. C. Wright* for Chicago & North Western Railway Company, intervener. May 7, 1912. Reparation awarded for $5.60, based on excessive minimum weight.

4019 (U. R. No. 583). WAHLGREN FURNITURE COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.—Alleged unreasonable rate on furniture from Chicago, Ill., to Harlowton, Mont. *O. W. Tong* for complainant. *F. G. Wright* for defendants. May 7, 1912. Complaint dismissed.

4142 (U. R. No. 584). W. T. FERGUSON LUMBER COMPANY *v.* LOUISIANA & ARKANSAS RAILWAY COMPANY ET AL.—Unreasonable rate on lumber from Good Pine, La., to Evansville, Ill. *C. F. Ziebold* for complainant. *C. E. Perkins* for St. Louis, Iron Mountain & Southern Railway Company. May 7, 1912. Reparation awarded for $4.23.

4159 (U. R. No. 585). CHAFFIN COAL COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL.—Unreasonable rate on coal from Hocking district of Ohio to Manitowoc, Wis., and Manistique, Mich. *Michael F. Gallagher* for complainant. *W. C. Coleman*, *O. E. Butterfield*, *D. P. Connell*, *James H. Campbell*, and *H. Wilson* for defendants. May 7, 1912. Award of reparation deferred pending presentation of necessary data.

4195 (U. R. No. 586). FRENCH BROAD MANUFACTURING COMPANY *v.* LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.—Unreasonable rate on hickory logs from Binfield and Alnwick, Tenn., to Knoxville, Tenn., when destined to points beyond. *R. P. Walker* for complainant. *Nelson W. Proctor* and *Claudian B. Northrop* for defendants. May 7, 1912. Reparation awarded for $25.05.

4228 (U. R. No. 587). J. Q. DICKINSON & COMPANY *v.* KANAWHA & MICHIGAN RAILWAY COMPANY ET AL.—Unreasonable rate on calcium chloride from Malden, W. Va., to Los Angeles, Cal. *J. B. Daish* and *J. Raymond Hoover* for complainant. *W. N. King* for Kanawha & Michigan Railway Company. May 7, 1912. Reparation awarded for $41.90.

4442 (U. R. No. 588). ALBERT MILLER & COMPANY *v.* ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.—Alleged unreasonable rate on potatoes from Alexandria, La., to Peoria, Ill.

J. E. R[illegible] for complainant. *F. G. Wright* a
for defendants. May 7, 1912. Complaint dismiss

447[illegible] (U. R. No. 58[illegible]). EDWARD BYRNES, TRUST
& COMPANY.—Unreasonable rate on grapes from
York, N. Y. *H. [illegible] Leat* for complainant. *M.*
defendant. May 7, 1912. Reparation awarded

[illegible] (U. R. No. 59[illegible]). A. J. PHILLIPS COMPAN
WESTERN RAILWAY COMPANY ET AL.—Unreasonab
[illegible] window screens from Fenton, Mich., to
Antonio, Tex. *W. B. Phillips* and *G. B. Port*
H. [illegible] M[illegible], *H. A. Scandrett*, *F. H. Wood*, an
defendants. April 5, 1912. Reparation awarded

415[illegible] (U. R. No. 591). REINHARDT GRAIN COM
NORTH ARKANSAS RAILROAD COMPANY ET AL.—U
corn from Fairview, Mo., to Terrell, Tex. *D. I*
plainant. *[illegible] D. Whitney* and *E. L. Sargent* fo
13, 1912. Reparation awarded for $19.60.

4211 (U. R. No. 592). CHATTANOOGA PLOW CO
VANIA RAILROAD COMPANY ET AL.—Unreasonable
from Johnstown, Pa., to Chattanooga, Tenn. *A*
complainant. *Charles J. Rixey, jr.*, for Cincinn
Texas Pacific Railway Company. May 7, 1912.
for $15.71.

4286 (U. R. No. 593). GOLDFIELD CONSOLIDAT
v. SOUTHERN PACIFIC COMPANY ET AL.—Unreason
peroxide from San Francisco, Cal., to Goldfield
Seeds for complainant. *H. A. Scandrett*, *C. W.*
H. Brown for defendants. May 13, 1912. Rep
$1,015.54.

4370 (U. R. No. 594). PEERLESS WOOLEN MI
NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPA
RICHMOND HOSIERY MILLS *v.* NASHVILLE, CHATT
RAILWAY ET AL.—Alleged unreasonable rate on
nooga, Tenn., to Rossville, Ga. *A. B. Haye*
R. Walton Moore for defendants. May 13, 191
missed.

4407 (U. R. No. 595). WILLIAM SCHUETTE &
& IRON RANGE RAILROAD COMPANY ET AL.—Unre
lumber from Ely, Minn., to Brookville, Pa. *W.*
plainant. No appearances for defendants. Ma
tion awarded for $28.21.

4583 (U. R. No. 596). WEST COAST SHINGLE C
PAUL, MINNEAPOLIS & OMAHA RAILWAY COM
charge for storage of carload of shingles fr

to Minnesota Transfer, Minn. *G. R. Eastman* for complainant. *W. D. Burr*, *H. H. Brown*, and *W. H. Norris* for defendants. May 13, 1912. Held open for proof of refund.

2847 (U. R. No. 597). VINCENNES BRIDGE COMPANY *v.* BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY ET AL.—No. 3363. ROBINSON & COMPANY ET AL. *v.* LOUISIANA WESTERN RAILROAD COMPANY ET AL.—No. 3130. STEARNS & CULVER LUMBER COMPANY *v.* LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.—No. 3549. CENTURY MANUFACTURING COMPANY *v.* CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.—Various joint rates found unreasonable to the extent they exceeded the aggregate of the intermediate rates. *G. M. Stephen* for complainants. *James Stillwell*, *R. Walton Moore* *S. H. West*, *Roy F. Britton*, *C. C. Wright*, *D. P. Connell*, *William A. Northcutt*, and *Edward Barton* for defendants. May 13, 1912. Reparation awarded for (total) $172.55.

4058 (U. R. No. 598). WALSH & WEIDNER BOILER COMPANY *v.* ALABAMA GREAT SOUTHERN RAILROAD COMPANY.—Unreasonable rate on boiler iron from Chattanooga, Tenn., to Woodstock, Ala. *Arthur B. Hayes* for complainant. *Charles J. Rixey, jr.*, for defendant. May 13, 1912. Reparation awarded for $23.75.

NOTE.—The amount of reparation awarded in the above cases aggregates $14,204.62.

REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING THE TIME COVERED BY THIS VOLUME.

3772. Iowa Paint Manufacturing Company *v.* Minneapolis & St. Louis Railroad Company et al.—May 7, 1912. Reparation for $110.27, with interest, on shipment of dry-earth paint and lampblack from Fort Dodge, Iowa, to Butte, Mont., on account of excessive rate.

4055. Lindsay & Company *v.* Grand Rapids & Indiana Railway Company et al.—May 7, 1912. Reparation for $5.75, with interest, on shipment of boiler from Kalamazoo, Mich., to Fredonia, Wis., on account of excessive rate.

Note.—The amount of reparation awarded in the above cases aggregates $116.02.

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[The number in parentheses following citation indicates where paragraph occurs or subject is considered.]

COMMODITIES.

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LOCALITIES—Continued.

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